FEDERAL REGISTER

Vol. 84 Tuesday,

No. 93 May 14, 2019

Pages 21233–21686

OFFICE OF THE FEDERAL REGISTER

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 181219999–8999–01]

RIN 0694–AH72

Addition of Certain Entities to the Entity List, Revision of an Entry on the Entity List, and Removal of an Entity From the Entity List

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends the Export Administration Regulations (EAR) by adding twelve entities, under a total of sixteen entries, to the Entity List. These twelve entities have been determined by the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States and will be listed on the Entity List under the destinations of China, Hong Kong, Pakistan and the United Arab Emirates. This rule also modifies one existing entry on the Entity List under the destination of the United Arab Emirates. Finally, this rule removes one entity under the destination of the United Arab Emirates. The removal is made in connection with a request for removal that BIS received pursuant to sections of the EAR used for requesting removal or modification of an Entity List entry and a review of information provided in that request.

DATES: This rule is effective May 14, 2019.

FOR FURTHER INFORMATION CONTACT: Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Email: *ERC@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Entity List (15 CFR, Subchapter C, part 744, Supplement No. 4) identifies entities reasonably believed to be involved, or to pose a significant risk of being or becoming involved, in activities contrary to the national security or foreign policy interests of the United States. The Export Administration Regulations (EAR) (15 CFR, Subchapter C, parts 730–774) impose additional license requirements on, and limits the availability of most license exceptions for, exports, reexports, and transfers (in-country) to listed entities. The license review policy for each listed entity is identified in the ''License review policy'' column on the Entity List, and the impact on the availability of license exceptions is described in the relevant **Federal Register** notice adding entities to the Entity List. BIS places entities on the Entity List pursuant to part 744 (Control Policy: End-User and End-Use Based) and part 746 (Embargoes and Other Special Controls) of the EAR.

The End-User Review Committee (ERC), composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List. The ERC makes all decisions to add an entry to the Entity List by majority vote, and makes all decisions to remove or modify an entry by unanimous vote.

ERC Entity List Decisions

Additions to the Entity List

This rule implements the decision of the ERC to add twelve entities, under a total of sixteen entries, to the Entity List; four of the entities being added are located in two destinations. The twelve entities are being added based on § 744.11 (License requirements that apply to entities acting contrary to the national security or foreign policy interests of the United States) of the EAR. The sixteen entries consist of six entries located in China, four entries located in Hong Kong, one entry located Pakistan and five entries in the United Arab Emirates (U.A.E.).

The ERC reviewed § 744.11(b) (Criteria for revising the Entity List) in making the determination to add these twelve entities to the Entity List. Under that paragraph, persons for whom there is reasonable cause to believe, based on specific and articulable facts, that they have been involved, are involved, or pose a significant risk of being or becoming involved in activities that are contrary to the national security or foreign policy interests of the United States, along with those acting on behalf of such persons, may be added to the Entity List. Paragraphs (b)(1) through (5) of § 744.11 provide an illustrative list of activities that could be contrary to the national security or foreign policy interests of the United States. For each of the twelve entities described below, the ERC made the requisite determination under the standard set forth in § 744.11(b).

Pursuant to § 744.11(b) of the EAR, the ERC determined to add Longkui Qu and Taizhou CBM-Future New Material Science and Technology Co., Ltd., both located in China, to the Entity List for engaging in activities contrary to the national security interests of the United States. Specifically, these entities participated in the prohibited export of controlled technology concerning the manufacture of syntactic foam and supplying syntactic foam to PRC state-owned enterprises, PRC defense industrial corporations, and PRC military-related academic institutions.

The ERC also determined to add four companies—Avin Electronics Technology Co., Ltd. (AETC); Multi-Mart Electronics Technology Co, Ltd.; Tenco Technology Company Ltd.; and Yutron Technology Co. Ltd.—to the Entity List under the destinations of China and Hong Kong for actions contrary to the national security or foreign policy interests of the United States. Specifically, these entities have been attempting to procure U.S.-origin commodities that would ultimately provide material support to Iran's weapons of mass destruction and military programs, in violation of U.S. export controls.

In addition, the ERC determined to add Impex Trade & Services, located in the destination of Pakistan, to the Entity List for actions contrary to the national security or foreign policy interests of the United States. Specifically, Impex Trade & Services has been involved in proliferation to unsafeguarded nuclear activities.

Under the destination of the United Arab Emirates (U.A.E.), the ERC determined that German Sky

International Trading Company LLC has been involved in activities that are contrary to the national security and foreign policy interests of the United States. Specifically, in accordance with § 744.11(b)(4), German Sky International Trading Company LLC is being added to the Entity List because it has prevented the accomplishment of end-user checks conducted by the Department of Commerce. Also under the destination of the U.A.E., the ERC has determined to add to the Entity List Emirates Hermes General Trading; Presto Freight International, LLC; Basha Asmath Shaikh; and Manohar Nair. These four entities have been involved in activities that are contrary to the national security and foreign policy interests of the United States as set forth in § 744.11(b). Emirates Hermes General Trading and Presto Freight International, LLC, operated by Basha Asmath Shaikh and Manohar Nair, procured U.S.-origin items for Complete Freight Solutions, a listed entity on the Entity List, and for Mahan Air, an Iranian airline that is subject to a BIS temporary denial order and has been designated a Specially Designated Global Terrorist by the U.S. Department of Treasury's Office of Foreign Assets Control.

Pursuant to § 744.11(b) of the EAR, the ERC determined that the conduct of these twelve entities raises sufficient concern that prior review of exports, reexports, or transfers (in-country) of all items subject to the EAR involving these entities, and the possible imposition of license conditions or license denials on shipments to the persons, will enhance BIS's ability to prevent violations of the EAR.

For the twelve entities, under a total of sixteen entries, being added to the Entity List, BIS imposes a license requirement for all items subject to the EAR and a license review policy of presumption of denial. The license requirements apply to any transaction in which items are to be exported, reexported, or transferred (in-country) to any of the entities or in which such entities act as purchaser, intermediate consignee, ultimate consignee, or end-user. In addition, no license exceptions are available for exports, reexports, or transfers (in-country) to the entities being added to the Entity List in this rule. The acronym ''a.k.a.'' (also known as) is used in entries on the Entity List to identify aliases, thereby assisting exporters, reexporters, and transferors in identifying entities on the Entity List.

This final rule adds the following twelve entities, under a total of sixteen entries, to the Entity List:

China

(1) *Avin Electronics Technology Co., Ltd. (AETC),* Room 401, Yuepeng Building, Jiabin Road, Luohu District, Shenzhen, Guangdong, China; *and* 1019 Jiabin Road, Luohu Qu, Shenzhen Shi, Guangdong, China (see alternate address under Hong Kong);

(2) *Longkui Qu,* Gucheng, Linhai, Zhejiang, China 317000; *and* China Jincheon Tung Cheng Jin Road, Linhai City, Zhejiang Province, #431, 317005, China;

(3) *Multi-Mart Electronics Technology Co, Ltd.,* 5/F Blk 37A, 3 Qiaogao Road, Nanhai, Guangdong, Foshan, China (see alternate address under Hong Kong);

(4) *Taizhou CBM-Future New Material Science and Technology Co., Ltd.,* a.k.a., the following one alias:

—CBM Future.

China Jincheon Tung Cheng Jin Road, Linhai City, Zhejiang Province #431, 317005, China;

(5) *Tenco Technology Company Ltd.,* a.k.a., the following three aliases:

—Tenco International Co., Ltd.;

—Shenzhen Tenco Technology Co., Ltd.; *and*

—Shenzhen Shengfaweiye Electronic Co., Ltd.

Rm. 2709, Block A, Jiahe Huaqiang Building, Shennan Middle Rd., F Shenzhen, Guangdong 518007, China; *and* Room 2709, Block A, Jiahe Building, Shennan Mid Road, Futian District, Shenzhen, 518000, China (see alternate addresses under Hong Kong); *and*

(6) *Yutron Technology Co. Ltd.,* Room 201–203, Building 7B, International Business Center, 1001 Honghua Road, Futian Free Trade Zone, Shenzhen, China (see alternate addresses under Hong Kong).

Hong Kong

(1) *Avin Electronics Technology Co., Ltd. (AETC),* 10F, Kras Asia Industrial Bldg., No. 79 Hung To Road Kwun Kowloon, Hong Kong, 999077 (see alternate addresses under China);

(2) *Multi-Mart Electronics Technology Co, Ltd.,* 29J King Palace Plaza, 55 King Yip Street, KwunTong, Kowloon, Hong Kong (see alternate address under China);

(3) *Tenco Technology Company Ltd.,* a.k.a., the following three aliases:

—Tenco International Co., Ltd.;

—Shenzhen Tenco Technology Co., Ltd.; *and*

—Shenzhen Shengfaweiye Electronic Co., Ltd.

Room 311 3F Genplas Industrial Building, 56 Hoi Yuen Road, Kwun Kowloon, Hong Kong; *and* Room 15, 6F Corporation Square, 8 Lam Lok Street, Kowloon Bay, Hong Kong (see alternate addresses under China); *and*

(4) *Yutron Technology Co. Ltd.,* Suite B, 11/F, Foo Cheong Building, 82–86 Wing Lok Street, Sheung Wan, Hong Kong; *and* 24–28 5F, Topsail Plaza, 11 On Sum Street, Shaitin, Hong Kong (see alternate address under China).

Pakistan

(1) *IMPEX Trade & Services,* 455/A Adamjee Road, Saddar, Rawalpuindi, Pakistan.

United Arab Emirates

(1) *Basha Asmath Shaikh,* Office M–2, Al Andalus Bldg, Next to Shoemart Bldg, Abu Hail, Dubai, U.A.E.; *and* P.O. Box 29687, Dubai, U.A.E.; *and* P.O. Box 191252, Dubai, U.A.E.;

(2) *Emirates Hermes General Trading,* a.k.a. the following two aliases:

—Emirates Hermes General Trading LLC; *and*

—Emirates Hermes General Trading Co., Inc.

Office M–2, Al Andalus Bldg, Next to Shoemart Bldg, Abu Hail, Dubai, U.A.E.; *and* P.O. Box 29687, Dubai, U.A.E.; *and* P.O. Box 191252, Dubai, U.A.E.; *and* 73 Al Mina Rd., Dubai, U.A.E.; *and* Emirates Islamic Bank Building Al Diyafa, Dubai, U.A.E.; *and* P.O. Box: 29687, Office No: M–02, Al Andalus Building, Shoe-Mart Building, Next To Abu Hail Shopping Centre, Abu Hail, Dubai, U.A.E.; *and* 2nd of December Street 3, Office 314, Yousuf Al Otaiba Building near Al Maya Supermarket, Trade Center, 191252, Dubai, U.A.E.;

(3) *German Sky International Trading Company LLC,* a.k.a., the one alias:

—Civil Trading FZE.

Office No. 901, Riqqa Al Buteen Plaza, Al Maktoum Street, Dubai, UAE; *and* Al Maktoum Road, 9th Floor, Riqqa Al Buteen Plaza Bldg, Dubai, UAE; *and* P.O. Box 16111 Ras Al Khaimah, U.A.E.;

(4) *Manohar Nair,* a.k.a., the following one alias:

—Manoharan Nair.

Office M–2, Al Andalus Bldg, Next to Shoemart Bldg, Abu Hail, Dubai, U.A.E., *and* P.O. Box 29687, Dubai, U.A.E.; *and* P.O. Box 191252, Dubai, U.A.E.; *and*

(5) *Presto Freight International, LLC, aka Presto Freight International LLC (PFI),* Office M–2, Al Andalus Bldg, Next to Shoemart Bldg, Abu Hail, Dubai, U.A.E.; *and* P.O. Box 29687, Dubai, U.A.E.; *and* P.O. Box 191252, Dubai, U.A.E.; *and* P.O. Box No. 115360, Mezzanine Floor, Office No. M–02, Al Andalus Building, Above Shoe -Mart shop (Next to Abu Hail Center), Abu Hail, Dubai U.A.E.

Modification to the Entity List

This final rule implements the decision of the ERC to modify one existing entry, Modest Marking LLC, which was added to the Entity List under the destination of the United Arab Emirates on January 26, 2018 (83 FR 3580). BIS is modifying the existing entry to add an alias. This final rule makes the following modifications to one entry on the Entity List:

United Arab Emirates

(1) *Modest Marketing LLC,* a.k.a. the following one alias:

—Argos Composites Trading LLC.

P.O. Box 51436, Dubai, U.A.E.

Removal From the Entity List

This rule implements a decision of the ERC to remove DGL Clearing and Forwarding LLC, an entity located in the U.A.E., from the Entity List on the basis of a removal request. The entry for DGL Clearing and Forwarding LLC was added to the Entity List on January 26, 2018 (83 FR 3580). The ERC decided to remove this entry based on information BIS received pursuant to § 744.16 of the EAR and the review the ERC conducted in accordance with procedures described in Supplement No. 5 to part 744.

This final rule implements the decision to remove the following entity located in the U.A.E. from the Entity List:

United Arab Emirates

(1) *DGL Clearing and Forwarding LLC,* P.O. Box 94353, Abu Dhabi, U.A.E.

Savings Clause

Shipments of items removed from eligibility for a License Exception or for export or reexport without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export or reexport, on May 14, 2019, pursuant to actual orders for export or reexport to a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export or NLR.

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (Title XVII, Subtitle B of Pub. L. 115–232), which provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule. As set forth in § 1768 of ECRA, all delegations, rules, regulations, orders, determinations, licenses, or other forms of administrative action that have been made, issued, conducted, or allowed to become effective under the Export Administration Act of 1979 (50 U.S.C. 4601 *et seq.*) (as in effect prior to August 13, 2018, and as continued in effect pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) and Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 8, 2018, 83 FR 39871 (August 13, 2018)), or the Export Administration Regulations, and are in effect as of August 13, 2018, shall continue in effect according to their terms until modified, superseded, set aside, or revoked under the authority of ECRA.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866. This rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to or be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications, and carries a burden estimate of 43.8 minutes for a manual or electronic submission.

Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule. You may send comments regarding the collection of information associated with this rule, including suggestions for reducing the burden, to Jasmeet K. Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. Pursuant to sec. 1762 of the Export Control Reform Act of 2018 (Title XVII, Subtitle B of Pub. L. 115–232), which was included in the John S. McCain National Defense Authorization Act for Fiscal Year 2019, this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

5. This action involves the removal of an entity from the Entity List. Removals from the Entity List involve interagency deliberation and result from review of public and non-public sources, including, where applicable, sensitive law enforcement information and classified information, and the measurement of such information against the Entity List removal criteria. This information is reviewed according to the procedures and criteria for evaluating removal requests from the Entity List, as set forth in 15 CFR 744.11, 15 CFR 744.16, and 15 CFR part 744, Supplement No. 5. For reasons of national security, BIS is not at liberty to provide to the public detailed information on which the ERC relies to make the decisions to remove these entities. In addition, the information included in a removal request is exchanged between the applicant and the ERC, which by law (sec. 1761(h) of the ECRA), BIS is restricted from sharing with the public. Moreover, removal requests from the Entity List may contain confidential business information that is necessary for the extensive review conducted by the ERC.

6. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: Pub. L. 115–232, Title XVII, Subtitle B. 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of August 8, 2018, 83 FR 39871 (August 13, 2018); Notice of September 19, 2018, 83 FR 47799 (September 20, 2018); Notice of November 8, 2018, 83 FR 56253 (November 9, 2019); Notice of January 16, 2019, 84 FR 127 (January 18, 2019).

■ 2. Supplement No. 4 to part 744 is amended:

■ a. Under China, by adding in alphabetical order, six Chinese entities, ''Avin Electronics Technology Co., Ltd. (AETC),'' ''Longkui Qu,'' ''Multi-Mart Electronics Technology Co, Ltd.,'' ''Taizhou CBM-Future New Material Science and Technology Co., Ltd.,'' ''Tenco Technology Company Ltd.'' and ''Yutron Technology Co. Ltd.'';

■ b. Under Hong Kong, by adding in alphabetical order, four Hong Kong entities, ''Avin Electronics Technology Co., Ltd. (AETC),'' ''Multi-Mart Electronics Technology Co, Ltd.,'' ''Tenco Technology Company Ltd.'' and ''Yutron Technology Co. Ltd.'';

■ c. Under Pakistan, by adding in alphabetical order, one Pakistani entity, ''IMPEX Trade & Services''; and

■ d. Under the United Arab Emirates:

■ i. By adding in alphabetical order, one Emirati entity, ''Basha Asmath Shaikh'';

■ ii. By removing one Emirati entity, ''DGL Clearing and Forwarding LLC, P.O. Box 94353, Abu Dhabi, U.A.E.'';

■ iii. By adding in alphabetical order, three Emirati entities, ''Emirates Hermes General Trading'', ''German Sky International Trading Company LLC,'' and ''Manohar Nair'';

■ iv. By revising Emirati entity ''Modest Marketing LLC''; and

■ v. By adding in alphabetical order, one Emirati entity, ''Presto Freight International, LLC'';

The additions and revisions read as follows:

Supplement No. 4 to Part 744—Entity List

* * * * *

Country	Entity	License requirement	License review policy	**Federal Register** citation
*	*	*	*	*
CHINA, PEOPLE'S REPUBLIC OF.	*	*	*	*
	Avin Electronics Technology Co., Ltd. (AETC), Room 401, Yuepeng Building, Jiabin Road, Luohu District, Shenzhen, Guangdong, China; *and* 1019 Jiabin Road, Luohu Qu, Shenzhen Shi, Guangdong, China (see alternate address under Hong Kong).	For all items subject to the EAR. (See § 744.11 of the EAR.)	Presumption of denial	84 FR [INSERT FR PAGE NUMBER 05/14/2019].
	*	*	*	*
	Longkui Qu, Gucheng, Linhai, Zhejiang, China 317000; *and* China Jincheon Tung Cheng Jin Road, Linhai City, Zhejian Province, #431, 317005, China.	For all items subject to the EAR. (See § 744.11 of the EAR.)	Presumption of denial	84 FR [INSERT FR PAGE NUMBER 05/14/2019].
	*	*	*	*
	Multi-Mart Electronics Technology Co, Ltd., S/F Blk 37A, 3 Qiaogao Road, Nanhai, Guangdong, Foshan, China (see alternate address under Hong Kong).	For all items subject to the EAR. (See § 744.11 of the EAR.)	Presumption of denial	84 FR [INSERT FR PAGE NUMBER 05/14/2019].
	*	*	*	*
	Taizhou CBM-Future New Material Science and Technology Co., Ltd., a.k.a., the following one alias: —CBM Future. China Jincheon Tung Cheng Jin Road, Linhai City, Zhejiang Province #431, 317005, China	For all items subject to the EAR. (See § 744.11 of the EAR.)	Presumption of denial	84 FR [INSERT FR PAGE NUMBER 05/14/2019].
	*	*	*	*
	Tenco Technology Company Ltd., a.k.a., the following three aliases: —Tenco International Co., Ltd.; —Shenzhen Tenco Technology Co., Ltd.; *and* —Shenzhen Shengfaweiye Electronic Co., Ltd. Rm. 2709, Block A, Jiahe Huaqiang Building, Shennan Middle Rd., F Shenzhen, Guangdong 518007, China; *and* Room 2709, Block A, Jiahe Building, Shennan Mid Road, Futian District, Shenzhen, 518000, China (see alternate addresses under Hong Kong).	For all items subject to the EAR. (See § 744.11 of the EAR.)	Presumption of denial	84 FR [INSERT FR PAGE NUMBER 05/14/2019].
	*	*	*	*
	Yutron Technology Co. Ltd., Room 201–203, Building 7B, International Business Center, 1001 Honghua Road, Futian Free Trade Zone, Shenzhen, China (see alternate addresses under Hong Kong).	For all items subject to the EAR. (See § 744.11 of the EAR.)	Presumption of denial	84 FR [INSERT FR PAGE NUMBER 05/14/2019].
	*	*	*	*

Country	Entity	License requirement	License review policy	Federal Register citation
*	* * *	*	* *	*
HONG KONG	* * *	*	* *	*
	Avin Electronics Technology Co., Ltd. (AETC), 10F, Kras Asia Industrial Bldg., No. 79 Hung To Road Kwun Kowloon, Hong Kong, 999077 (see alternate addresses under China).	For all items subject to the EAR. (See § 744.11 of the EAR.)	Presumption of denial	84 FR [INSERT FR PAGE NUMBER 05/14/2019]
	* * *	*	* *	*
	Multi-Mart Electronics Technology Co, Ltd., 29J King Palace Plaza, 55 King Yip Street, Kwun Tong, Kowloon, Hong Kong (see alternate address under China).	For all items subject to the EAR. (See § 744.11 of the EAR.)	Presumption of denial	84 FR [INSERT FR PAGE NUMBER 05/14/2019].
	* * *	*	* *	*
	Tenco Technology Company Ltd., a.k.a., the following three aliases: —Tenco International Co., Ltd.; —Shenzhen Tenco Technology Co., Ltd.; *and* —Shenzhen Shengfaweiye Electronic Co., Ltd. Room 311 3F Genplas Industrial Building, 56 Hoi Yuen Road, Kwun Kowloon, Hong Kong; *and* Room 15, 6F Corporation Square, 8 Lam Lok Street, Kowloon Bay, Hong Kong (see alternate addresses under China).	For all items subject to the EAR. (See § 744.11 of the EAR.)	Presumption of denial	84 FR [INSERT FR PAGE NUMBER 05/14/2019].
	* * *	*	* *	*
	Yutron Technology Co. Ltd., Suite B, 11/F, Foo Cheong Building, 82–86 Wing Lok Street, Sheung Wan, Hong Kong; *and* 24–28 5F, Topsail Plaza, 11 On Sum Street, Shaitin, Hong Kong (see alternate address under China).	For all items subject to the EAR. (See § 744.11 of the EAR.)	Presumption of denial	84 FR [INSERT FR PAGE NUMBER 05/14/2019].
	* * *	*	* *	*
*	* * *	*	* *	*
PAKISTAN	* * *	*	* *	*
	IMPEX Trade & Services, 455/A Adamjee Road, Saddar, Rawalpuindi, Pakistan.	For all items subject to the EAR. (See § 744.11 of the EAR.)	Presumption of denial	84 FR [INSERT FR PAGE NUMBER 05/14/2019].
	* * *	*	* *	*
*	* * *	*	* *	*
UNITED ARAB EMIRATES.	* * *	*	* *	*
	Basha Asmath Shaikh Office M–2, Al Andalus Bldg, Next to Shoemart Bldg, Abu Hail, Dubai, U.A.E.; *and* P.O. Box 29687, Dubai, U.A.E.; *and* P.O. Box 191252, Dubai, U.A.E.	For all items subject to the EAR. (See § 744.11 of the EAR.)	Presumption of denial	84 FR [INSERT FR PAGE NUMBER 05/14/2019].
	* * *	*	* *	*
	Emirates Hermes General Trading, a.k.a. the following two aliases: —Emirates Hermes General Trading LLC; *and* —Emirates Hermes General Trading Co., Inc. Office M–2, Al Andalus Bldg, Next to Shoemart Bldg, Abu Hail, Dubai, U.A.E.; *and* P.O. Box 29687, Dubai, U.A.E.; *and* P.O. Box 191252, Dubai, U.A.E.; *and* 73 Al Mina Rd., Dubai, U.A.E.; *and* Emirates Islamic Bank Building Al Diyafa, Dubai, U.A.E.; *and* P.O. Box: 29687, Office No: M–02, Al Andalus Building, Shoe-Mart Building, Next To Abu Hail Shopping Centre, Abu Hail , Dubai, U.A.E.; *and* 2nd of December Street 3, Office 314, Yousuf Al Otaiba Building near Al Maya Supermarket, Trade Center, 191252, Dubai, U.A.E.	For all items subject to the EAR. (See § 744.11 of the EAR.)	Presumption of denial	84 FR [INSERT FR PAGE NUMBER 05/14/2019].
	* * *	*	* *	*

Country	Entity	License requirement	License review policy	**Federal Register** citation
	German Sky International Trading Company LLC, a.k.a., the one alias: —Civil Trading FZE Office No. 901, Riqqa Al Buteen Plaza, Al Maktoum Street, Dubai, UAE; *and* Al Maktoum Road, 9th Floor, Riqqa Al Buteen Plaza Bldg, Dubai, UAE; *and* P.O. Box 16111 Ras Al Khaimah, U.A.E.	For all items subject to the EAR. (See § 744.11 of the EAR.)	Presumption of denial	84 FR [INSERT FR PAGE NUMBER 05/14/2019].
	* *	*	* *	*
	Manohar Nair, a.k.a., the following one alias: —Manoharan Nair. Office M–2, Al Andalus Bldg, Next to Shoemart Bldg, Abu Hail, Dubai, U.A.E., *and* P.O. Box 29687, Dubai, U.A.E.; *and* P.O. Box 191252, Dubai, U.A.E.	For all items subject to the EAR. (See § 744.11 of the EAR.)	Presumption of denial	*Insert previous citations* 84 FR [INSERT FR PAGE NUMBER 05/14/2019].
	* *	*	* *	*
	Modest Marketing LLC, a.k.a. the following one alias: —Argos Composites Trading LLC. P.O. Box 51436, Dubai, U.A.E.	For all items subject to the EAR. (See § 744.11 of the EAR.)	Presumption of denial	83 FR 3580, 1/26/18. 84 FR [INSERT FR PAGE NUMBER 05/14/2019].
	* *	*	* *	*
	Presto Freight International, LLC, aka Presto Freight International LLC (PFI), Office M–2, Al Andalus Bldg, Next to Shoemart Bldg, Abu Hail, Dubai, U.A.E.; *and* P.O. Box 29687, Dubai, U.A.E.; *and* P.O. Box 191252, Dubai, U.A.E.; *and* P.O. Box No. 115360, Mezzanine Floor, Office No. M–02, Al Andalus Building, Above Shoe-Mart shop (Next to Abu Hail Center), Abu Hail, Dubai U.A.E.	For all items subject to the EAR. (See § 744.11 of the EAR.)	Presumption of denial	84 FR [INSERT FR PAGE NUMBER 05/14/2019].
	* *	*	* *	*
*	* * *	*	* *	*

Dated: May 9, 2019.

Richard E. Ashooh,

Assistant Secretary for Export Administration.

[FR Doc. 2019–09945 Filed 5–13–19; 8:45 am]

BILLING CODE 3510–33–P

POSTAL SERVICE

39 CFR Part 111

New Electronic Signature Option

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is amending *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) to include a more flexible option for package addressees to provide an electronic signature indicating delivery of a package.

DATES: Effective June 23, 2019.

FOR FURTHER INFORMATION CONTACT: Karen F. Key at (202) 268–7492, Tiffany S. Jesse at (202) 268–7303, or Garry Rodriguez at (202) 268–7281.

SUPPLEMENTARY INFORMATION: The Postal Service published a notice of proposed rulemaking on March 15, 2019, (84 FR 9470–9471) to amend the DMM in various sections to offer a more flexible option for package addressees (or their representatives) to provide an electronic signature indicating delivery of a package, when the sender chooses the following signature services: Priority Mail Express®, Signature Confirmation™ service, and Insurance for more than $500. Generally, current practice is for the recipient of the package to sign at the time of delivery.

The Postal Service received one formal response to the proposed rule, which included multiple comments and suggestions.

The responder was generally in agreement with the continuing efforts of the Postal Service to enhance the level of service. However, the responder had several comments and suggestions as follows:

Comment: The Postal Service should resolve ambiguity in the process of registering for the electronic signature service and providing the signature.

Response: To sign up for the Electronic Signature Online (eSOL™) service, a customer must be an Informed Delivery® registered user or must register before they enroll for the service. When a customer logs on to their Informed Delivery account, they will see the eSOL icon to proceed with the enrollment. The signature will be collected/provided through an electronic process by computer or mobile phone.

Comment: The Postal Service should clarify what effects the transition to the electronic signature service may have on the ability to provide its service, or how customers will be affected by the transition to this new service.

Response: The Postal Service does not expect any transition issues to arise. After signing up and providing an electronic signature, the customer would receive notice via Informed Delivery of each eligible package expected to arrive, and an option to use the electronic signature for that package. Thus, the only impact on customers is that they can receive Priority Mail Express, Signature Confirmation and items Insured for over $500 more conveniently if they are registered for Informed Delivery and eSOL. The Postal Service will not leave a PS Form 3849, We Redeliver for You! notice and the customer would not be required to either be home for the delivery or pick up the item from a Post Office or schedule a redelivery.

Comment: The third comment questioned the potential of package theft, and the possibility of the Postal Service collecting data on the prevalence of such thefts.

Response: eSOL is an option for each item. If the item does not fit in the customer's mailbox, the customer has the option of providing instructions to their carrier indicating where to leave the item. The Postal Service will continue to offer the option of requiring

a recipient signature at the time of delivery. If a customer feels at risk due to potential package theft, eSOL may not be a service that they would like to use. For this initiative, the Postal Service is focused on providing an option to customers for a successful delivery of packages. We do not plan to collect data on the number of package thefts for ESOF items after the delivery is completed.

Suggestion: The Postal Service should deploy the electronic signature service through a digital platform requiring steps that increase perceived levels of security and prevent potential liability disputes from occurring.

Response: eSOL is available through Informed Delivery, a digital platform. To provide their signature, customers must successfully pass vigorous Knowledge-Based Authentication (KBA) to validate their identity. All standard security protocols for protecting customer signatures have been vetted and the signatures are maintained on a secure server.

Suggestion: The Postal Service should deploy photo delivery confirmation.

Response: Photo delivery confirmation is an option that the Postal Service is currently exploring. However, photo delivery confirmation is not being deployed with the eSOL application.

Suggestion: The Postal Service should give a customer the option to provide and update special delivery instructions.

Response: The option to provide delivery instructions is currently provided online for items that will not fit in the customer's mailbox.

Suggestion: The Postal Service should provide scheduled delivery service.

Response: Scheduled delivery service is an option that the Postal Service is currently exploring. However, scheduled delivery service is not being deployed with the eSOL application.

Suggestion: The Postal Service should extend the service to all packages, rather than just Commercial packages, and provide notice of this update.

Response: The application of an eSOL is available for consumers per the requirement to be a registered Informed Delivery customer. Currently, Informed Delivery is not available to business customers. However, shippers who want the Postal Service to obtain a signature at the time of delivery have the option to indicate this requirement in the shipping manifest. The Postal Service will provide notice if and when it expands the availability of the eSOL option to Retail packages that are Priority Mail Express, Insurance or Signature Confirmation.

As discussed in the Proposed Rule, the Postal Service is adding an electronic option for deliveries. Customers have the option to sign up through Informed Delivery and provide a signature electronically. This will enable the customer to apply the previously provided signature to future Commercial package deliveries sent to the customer's address using Priority Mail Express, Signature Confirmation service, or Insurance for more than $500, eliminating the need for a signature at the time of delivery. When the shipper does not reject the use of the previously provided signature, the customer who previously provided an electronic signature will be given the option for each delivery whether to sign at the time of delivery, or use the previously provided electronic signature.

For Priority Mail Express, the shipper already must request a signature in order for it be collected. This will make the previously provided electronic signature available for such deliveries, unless the shipper indicates on the shipping manifest that the signature needs to be collected from the recipient at the time of delivery.

Application to all shipments using Priority Mail Express, Signature Confirmation service, and Insurance for more than $500, rather than just Commercial shipments, may be phased in later.

Changes to the DMM language include a more general reference to the signature for the affected services, while adding a description of ''signature'' which distinguishes between the traditional signature and the electronic signature.

In addition, the Postal Service is removing outdated text referring to Priority Mail Express labels printed prior to January 2012.

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

100 Retail Mail Letters, Cards, Flats, and Parcels

* * * * *

110 Priority Mail Express

* * * * *

115 Mail Preparation

* * * * *

2.0 Priority Mail Express 1-Day and 2-Day

* * * * *

[Delete 2.2 Waiver of Signature, in its entirety and renumber 2.3 and 2.4 as 2.2 and 2.3.]

2.2 Signature Required

[Revise the first sentence of renumbered 2.2 to read as follows:]

For editions of Priority Mail Express Label 11–B or Label 11–F printed on or after January 2012, a mailer sending a Priority Mail Express item, and requiring a signature, must instruct the USPS to provide a signature by checking the ''signature required'' box on Label 11–B or Label 11–F or indicating signature is requested on single-ply commercial label. * * *

* * * * *

200 Commercial Mail Letters, Cards, Flats, and Parcels

* * * * *

210 Priority Mail Express

* * * * *

215 Mail Preparation

* * * * *

2.0 Priority Mail Express 1-Day and 2-Day

* * * * *

[Delete 2.2 Waiver of Signature, in its entirety and renumber 2.3 and 2.4 as 2.2 and 2.3.]

2.2 Signature Required

[Revise the first sentence of renumbered 2.2 to read as follows:]

For editions of Priority Mail Express Label 11–B or Label 11–F printed on or after January 2012, a mailer sending a Priority Mail Express item, and requiring a signature, must instruct the USPS to provide a signature by checking the ''signature required'' box on Label 11–B or Label 11–F or indicating

signature is requested on single-ply commercial label. * * *

* * * * *

500 Additional Mailing Services

503 Extra Services

1.0 Basic Standards for All Extra Services

1.1 Description

[Revise the first sentence of 1.1 to read as follows:]

Extra services described in 2.0 through 11.0 provide optional services such as insurance coverage, restricted delivery, and evidence of mailing, or a record of delivery (which includes a signature). * * *

* * * * *

1.8 Obtaining Delivery Information and Delivery Records

Delivery records for extra services are available as follows:

[Revise the text of item a to read as follows:]

a. Information by article number can be retrieved at *www.usps.com* or by calling 1–800–222–1811. A proof of delivery letter (including a signature, when available) may be provided by email. When a proof of delivery letter includes a signature, the signature provided may be a signature that was obtained from the recipient at the time of delivery or, for certain services, an electronic signature that was previously provided by the addressee (or representative) and is maintained on file with the Postal Service. Eligible mailers may require at the time of mailing that a signature be obtained from the recipient at the time of delivery.

* * * * *

4.0 Insured Mail

* * * * *

4.3 Basic Standards

4.3.1 Description

Insured mail is subject to the basic standards in 1.0; see *1.4* for eligibility. The following additional standards apply to insured mail:

* * * * *

[Revise the fourth and fifth sentences of item c to read as follows:]

c. * * * An item insured for more than $500.00 receives a delivery scan (includes returns products meeting the applicable standards in 505) and the USPS provides a signature as the delivery record to the mailer electronically (excludes returns products). Customers may optionally obtain a delivery record by purchasing a printed return receipt (Form 3811 (also see 6.0; excludes returns products). * * *

* * * * *

8.0 USPS Signature Services

8.1 Basic Standards

8.1.1 Description

* * * USPS Signature Services are available as follows:

[Revise the second sentence of item a to read as follows:]

a. * * * A delivery record (including a signature) is maintained by the USPS and is available electronically or by email, upon request. * * *

* * * * *

508 Recipient Services

1.0 Recipient Options

1.1 Basic Recipient Concerns

* * * * *

1.1.7 Priority Mail Express and Accountable Mail

The following conditions also apply to the delivery of Priority Mail Express, Registered Mail, Certified Mail, mail insured for more than $500.00, Adult Signature, or COD, as well as mail for which a return receipt is requested or the sender has specified restricted delivery:

* * * * *

[Revise the text of item b to read as follows:]

b. Unless an electronic signature is used as described in 503.1.8a, a mailpiece may not be opened or given to the recipient before the recipient signs and legibly prints his or her name on the applicable form or label and returns the form or label to the USPS employee.

* * * * *

Ruth B. Stevenson,

Attorney, Federal Compliance.

[FR Doc. 2019–09840 Filed 5–13–19; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

[EPA–HQ–OAR–2014–0606; FRL–9993–43–OAR]

RIN 2060–AT96

Amendments to Federal Implementation Plan for Managing Air Emissions From True Minor Sources in Indian Country in the Oil and Natural Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing three amendments to the existing National Oil and Natural Gas Federal Implementation Plan (National O&NG FIP). This final rule applies to new true minor sources and minor modifications at existing true minor sources in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector that are locating or expanding in Indian reservations or in other areas of Indian country over which an Indian tribe, or the EPA, has demonstrated a tribe's jurisdiction. The National O&NG FIP, which includes a mechanism for authorizing construction of true minor new and modified oil and natural gas sources, satisfies the minor source permitting requirement under the Federal Minor New Source Review (NSR) Program in Indian Country (Federal Indian Country Minor NSR rule). We are finalizing two amendments to apply the National O&NG FIP to the Indian country portion of the Uinta Basin Ozone Nonattainment Area. The purpose of these two amendments is make available the streamlined authorization to construct process provided by the National O&NG FIP to the Uintah and Ouray Reservation (U&O Reservation) as part of the Uinta Basin Ozone Nonattainment Area. We are also finalizing a minor technical correction to fix a typographical error in a provision of the National O&NG FIP.

DATES: The final rule is effective on May 14, 2019.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2014–0606, at *https://www.regulations.gov.* 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 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 electronically through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Stoneman, Outreach and Information Division, Office of Air Quality Planning and Standards (C–304–01), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–0823, facsimile number (919) 541–0072, email address: *stoneman.chris@epa.gov.*

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. General Information

A. What entities are potentially affected by this action?

Entities potentially affected by this final action include the Ute Indian Tribe,[1] as well as new and modified true minor sources that are in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector and that are in the Indian country [2] portion of the Uinta Basin Ozone Nonattainment Area. All the Indian country lands located within the Uinta Basin Ozone Nonattainment Area, of which the EPA is aware, are Ute Indian Tribe Indian country lands. Further, all of the Ute Indian Tribe Indian country lands of which the EPA is aware are located within the exterior boundaries of the U&O Reservation, and these amendments will apply to such lands. To the extent that there are Ute Indian Tribe dependent Indian communities under 18 U.S.C. 1151(b) or allotted lands under 18 U.S.C. 1151(c) that are located outside the exterior boundaries of the Reservation, those lands will not be covered by these amendments.[3] This action amends the National O&NG FIP, which only applies in Indian country, and it does not broaden its application to areas outside of Indian country. This final rule will not apply to any sources not in Indian country lands, including any areas within the exterior boundaries of the Reservation that are not Indian country lands.[4]

The list in Table 1 is not intended to necessarily be exhaustive, but rather to provide a guide for readers regarding entities likely to be potentially affected by this action. To determine whether your facility could be affected by this action, you should examine the applicability criteria in the Federal Indian Country Minor NSR rule and the National O&NG FIP (40 Code of Federal Regulations (CFR) 49.153 and 49.101, respectively). If you have any questions regarding the applicability of this action to a particular entity, contact the appropriate person listed in the **FOR FURTHER INFORMATION CONTACT** section.

[1] The Ute Indian Tribe is a federally recognized tribe organized under the Indian Reorganization Act of 1934, with a Constitution and By-Laws adopted by the Ute Indian Tribe on December 19, 1936, and approved by the Secretary of the Interior on January 19, 1937. *See* Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 83 FR 34863, 34866 (July 23, 2018); 48 Stat. 984, 25 U.S.C. 5123 (IRA); Constitution and By-Laws of the Ute Indian Tribe of the U&O Reservation, available at: *https://www.loc.gov/law/help/american-indian-consts/PDF/37026342.pdf.*

[2] Indian country is defined in the National O&NG FIP at 40 CFR 49.102, which adopts the definition at section 49.152 of the Federal Indian Country Minor NSR rule. 40 CFR 49.152 references 18 U.S.C. 1151, which defines Indian country as: (a) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. In 2014, the U.S. Court of Appeals for the D.C. Circuit addressed the EPA's authority to promulgate the FIP establishing the Federal Indian Country Minor NSR program (as well as another NSR permitting program) in Indian country. *Oklahoma Dept. of Environmental Quality* v. *EPA,* 740 F. 3d 185 (D.C. Cir. 2014). In that case, the court recognized the EPA's authority to promulgate a FIP to directly administer CAA programs on Indian reservations, but invalidated the FIP at issue as applied to non-reservation areas of Indian country in the absence of a demonstration of an Indian tribe's jurisdiction over such non-reservation area. To address this court decision, section 49.152 notes that the geographic scope of the Federal Indian Country Minor NSR rule is addressed at 40 CFR 49.151(c)(1). As described below, because the current revisions to the National O&NG FIP would apply only on Indian country lands that are within the exterior boundaries of the U&O Reservation, *i.e.,* on Reservation lands, they are unaffected by the *Oklahoma* court decision.

[3] Under the Clean Air Act (CAA), lands held in trust for the use of an Indian tribe are reservation lands within the definition at 18 U.S.C. 1151(a), regardless of whether the land is formally designated as a reservation. *See* Indian Tribes: Air Quality Planning and Management, 63 FR 7254, 7258 (1998) (''Tribal Authority Rule''); *Arizona Pub. Serv. Co.* v. *EPA,* 211 F.3d 1280, 1285–86 (D.C. Cir. 2000). The EPA's references in this FIP to Indian country lands within the exterior boundaries of the U&O Reservation include any such tribal trust lands that may be acquired by the Ute Indian Tribe.

[4] Because of a series of federal court decisions, there are some areas within the exterior boundaries of the U&O Reservation that are not Indian country lands. See *Ute Indian Tribe* v. *Utah,* 521 F. Supp. 1072 (D. Utah 1981); *Ute Indian Tribe* v. *Utah,* 716 F.2d 1298 (10th Cir. 1983); *Ute Indian Tribe* v. *Utah,* 773 F.2d 1087 (10th Cir. 1985) (en banc), cert. denied, 479 U.S. 994 (1986); *Hagen* v. *Utah,* 510 U.S. 399 (1994); *Ute Indian Tribe* v. *Utah,* 935 F. Supp. 1473 (D. Utah 1996); *Ute Indian Tribe* v. *Utah,* 114 F.3d 1513 (10th Cir. 1997), cert. denied, 522 U.S. 1107 (1998); *Ute Indian Tribe* v. *Utah,* 790 F.3d 1000 (10th Cir. 2015), cert. denied, 136 S. Ct. 1451 (2016); and *Ute Indian Tribe* v. *Myton,* 835 F.3d 1255 (10th Cir. 2016), cert. denied, 137 S. Ct. 2328 (2017).

TABLE 1—SOURCE CATEGORIES AFFECTED BY THIS ACTION

Industry category	NAICS code [a]	Examples of regulated entities/description of industry category
Oil and Natural Gas Production/Operations	21111	Exploration for crude petroleum and natural gas; drilling, completing, and equipping wells; operation of separators, emulsion breakers, desilting equipment, and field gathering lines for crude petroleum and natural gas; and all other activities in the preparation of oil and natural gas up to the point of shipment from the producing property. Production of crude petroleum, the mining and extraction of oil from oil shale and oil sands, the production of natural gas, sulfur recovery from natural gas, and the recovery of hydrocarbon liquids from oil and natural gas field gases.
Crude Petroleum and Natural Gas Extraction	211111	Exploration, development and/or the production of petroleum or natural gas from wells in which the hydrocarbons will initially flow or can be produced using normal pumping techniques or production of crude petroleum from surface shales or tar sands or from reservoirs in which the hydrocarbons are semisolids.
Natural Gas Liquid Extraction	211112	Recovery of liquid hydrocarbons from oil and natural gas field gases; and sulfur recovery from natural gas.
Drilling Oil and Natural Gas Wells	213111	Drilling oil and natural gas wells for others on a contract or fee basis, including spudding in, drilling in, redrilling, and directional drilling.
Support Activities for Oil and Natural Gas Operations	213112	Performing support activities on a contract or fee basis for oil and natural gas operations (except site preparation and related construction activities) such as exploration (except geophysical surveying and mapping); excavating slush pits and cellars, well surveying; running, cutting, and pulling casings, tubes, and rods; cementing wells, shooting wells; perforating well casings; acidizing and chemically treating wells; and cleaning out, bailing, and swabbing wells.
Engines (Spark Ignition and Compression Ignition) for Electric Power Generation.	22111	Provision of electric power to support oil and natural gas production where access to the electric grid is unavailable.

[a] North American Industry Classification System.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this final rule will also be available on the World Wide Web. Following signature by the EPA Administrator, a copy of this final rule will be posted in the regulations and standards section of our NSR home page located at *https://www.epa.gov/nsr* and on the tribal NSR page at *https://www.epa.gov/tribal-air/tribal-minor-new-source-review.*

C. Effective Date of This Rulemaking

This final rule is effective immediately upon publication. The Administrative Procedure Act (APA) provides that final rules shall not become effective until 30 days after publication in the **Federal Register**, except for, among other exceptions, ''a substantive rule which grants or recognizes an exemption or relieves a restriction.'' 5 U.S.C. 553(d)(1). In the absence of this final action, the streamlined authorization to construct process associated with the National O&NG FIP would be unavailable to oil and natural gas sources constructing or modifying in the Indian country portion of the Uinta Basin Ozone Nonattainment Area, and such sources otherwise would have to comply with the site-specific permitting requirements of the Federal Indian Country Minor NSR rule to locate or expand on the U&O Reservation. The amendments finalized today allow such sources to comply with the O&NG National FIP instead of having to obtain permits under the Federal Indian Country Minor NSR rule that would otherwise apply in nonattainment areas because of a limitation on the applicability of the National O&NG FIP. The purpose of the generally applicable 30-day delayed effective date is to ''give affected parties a reasonable time to adjust their behavior before the final rule takes effect.'' *Omnipoint Corp.* v. *FCC,* 78 F.3d 620, 630 (D.C. Cir. 1996). Here, affected sources are not subject to additional, new requirements such that they may need time to adjust their behavior before the rule takes effect, but are relieved of the requirement to follow just one specified permitting procedure and afforded the option to take advantage of an otherwise unavailable, streamlined approach to obtain authorization for construction. Accordingly, this action is excepted from the generally applicable APA 30-day delayed effective date requirement.[5]

II. Purpose of This Final Action

A. Overview

In this action, after considering the comments received, the EPA is finalizing amendments to the National O&NG FIP [6] consistent with the

[5] The APA provides another exception to the general requirement that final rules shall not become effective until 30 days after publication in the **Federal Register**: Except ''as otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d)(3). In determining whether good cause exists to waive the 30-day delay, an agency should ''balance the necessity for immediate implementation against principles of fundamental fairness which require that all affected persons be afforded a reasonable amount of time to prepare for the effective date of its ruling.'' *U.S.* v *Gavrilovic,* 551 F.2d 1099, 1105 (8th Cir. 1977). Here, affected sources are not adversely affected by making this action effective upon publication and fundamental fairness does not require that sources be prohibited from taking advantage of streamlined permitting of the National O&NG FIP for at least 30 days after publication. To the contrary, sources that can immediately pursue streamlined authorizations to construct may do so and sources that opt not to do so may still utilize the site-specific permitting approach of the Federal Indian Country Minor NSR rule. Under these circumstances, the EPA also finds that there is good cause under 5 U.S.C. 553(d)(3) to make this rule effective immediately upon publication.

[6] ''Federal Implementation Plan for True Minor Sources in Indian Country in the Oil and Natural

authorities and requirements of sections 301(a), 301(d)(4) and 110(a)(2)(C) of the CAA and 40 CFR 49.11. The rule extends coverage of the FIP to eligible true minor new and modified oil and natural gas sources in the Indian country portion of the Uinta Basin Ozone Nonattainment Area, making the FIP available as a mechanism for authorizing construction in that area. (The Indian country lands within the Uinta Basin Ozone Nonattainment Area to which these amendments apply are on the U&O Reservation.) The Uinta Basin is a petroleum-producing region that contains thousands of active oil and natural gas wells. Oil and natural gas production activity in the area is the primary source of anthropogenic emissions of volatile organic compounds (VOC) and nitrogen oxides (NO_X), ozone precursors that react to form wintertime ozone in the presence of sunlight and widespread snow cover.[7]

The National O&NG FIP currently provides a mechanism for authorizing construction for eligible true minor oil and natural gas sources wishing to locate or expand in areas of Indian country designated as attainment, unclassifiable and attainment/unclassifiable. As promulgated in 2016, it does not apply in areas designated as nonattainment.[8] In 2012, the counties in the Uinta Basin were designated as unclassifiable with respect to the 2008 ozone National Ambient Air Quality Standards (NAAQS),[9] and those areas were not designated as nonattainment with any NAAQS until 2018. Thus, when the National O&NG FIP became effective on August 2, 2016, it was available as a streamlined option for authorizing construction in the U&O Reservation, and owners and operators of eligible oil and natural gas sources were able to use that streamlined approach from that date.

However, on June 4, 2018, the EPA designated portions of the Uinta Basin as nonattainment with respect to the 2015 ozone NAAQS, and that designation became effective on August 3, 2018.[10] On that date, the Indian country portion of the nonattainment area fell out of the National O&NG FIP's coverage. Thus, the area currently lacks a streamlined mechanism to authorize construction of true minor new and modified oil and natural gas sources.

With this final action, the EPA is ensuring that the National O&NG FIP's streamlined approach for authorizing construction and requirements to comply with various emission standards and standards of performance will re-apply on the U&O Reservation. The EPA intends to further address air quality in the Uinta Basin through a separate U&O Reservation-specific FIP [11] containing requirements to reduce ozone-forming emissions from oil and natural gas sources on Indian country lands within the U&O Reservation. Through that rulemaking, the EPA will further address the Uinta Basin's air quality situation in an area-specific manner.

B. Rationale for Final Action

In the preamble to the final June 2016 National O&NG FIP, we indicated that we could extend the geographic coverage of the FIP to nonattainment areas, although we anticipated that we would also address emissions from oil and natural gas sources in separate area-specific FIPs. Specifically, we stated that the EPA could ''potentially apply the national FIP's requirements as appropriate to nonattainment areas where the EPA has established a separate, area-specific FIP.'' [12] We described the need to develop area-specific plans if and when areas of Indian country were designated nonattainment. Further, we specifically noted concern about the air quality problem in the Uinta Basin and indicated our expectation to propose a separate U&O Reservation-specific FIP to address the issue in this particular area.[13]

At the time that the National O&NG FIP was issued there were no areas officially designated as nonattainment in Indian country with oil and natural gas activity. In the absence of any such areas but anticipating the possibility, the EPA initially opted to not apply the National O&NG FIP in such areas, recognizing that whether and to what extent it might be extended to apply to nonattainment areas could be subsequently evaluated in the event of particular, relevant nonattainment designations, such as in the Uinta Basin. As noted above, the EPA previously did anticipate that, in the event of a nonattainment designation applicable to the Uinta Basin, it likely would not extend the National O&NG FIP until after the EPA had issued an area-specific nonattainment FIP, but that particular anticipatory view was not expressly set out in the relevant regulatory text. Now, faced with an actual nonattainment designation for the Uinta Basin, the EPA is required to address the question of whether the National O&NG FIP should be extended to nonattainment areas in the context of an actual tribal nonattainment area with O&NG activity.

Upon careful consideration of an actual, specific nonattainment determination, the EPA has determined that, under the particular circumstances presented, the National O&NG FIP may be extended narrowly to cover the Indian country portion of the Uinta Basin Ozone Nonattainment Area. The EPA is not completely eliminating or changing the applicability parameters of the National O&NG FIP, but instead creating only a narrow exception to the limitation on its application in nonattainment areas, such that it may apply in the Indian country portion of the Uinta Basin Ozone Nonattainment Area.

In light of the actual nonattainment designation, the EPA now has more carefully assessed the question of the applicability of the National O&NG FIP in one specific such area—the Indian country portion of the Uinta Basin Ozone Nonattainment Area—and, unlike what the EPA preliminarily had anticipated in connection with the June 2016 publication of the National O&NG FIP (but had not been required to definitively address), the EPA is satisfied that extending the National O&NG FIP will be adequately protective of air quality for the reasons stated here.

Gas Production and Natural Gas Processing Segments of the Oil and Natural Gas Sector; Amendments to the Federal Minor New Source Review Program in Indian Country to Address Requirements for True Minor Sources in the Oil and Natural Gas Sector,'' U.S. Environmental Protection Agency, 81 FR 35943, June 3, 2016, *https://www.gpo.gov/fdsys/pkg/FR-2016-06-03/pdf/2016-11969.pdf.*

[7] For more information, see: ''Ozone in the Uinta Basin,'' *https://deq.utah.gov/legacy/destinations/u/uintah-basin/ozone/overview.htm,* accessed August 16, 2018.

[8] See 40 CFR 49.101(b)(1)(v).

[9] ''Air Quality Designations for the 2008 Ozone National Ambient Air Quality Standards; Implementation of the 2008 National Ambient Air Quality Standards for Ozone: Nonattainment Area Classifications Approach, Attainment Deadlines and Revocation of the 1997 Ozone Standards for Transportation Conformity Purposes,'' U.S. Environmental Protection Agency, 77 FR 30087, May 21, 2012, *https://www.gpo.gov/fdsys/pkg/FR-2012-05-21/pdf/2012-11618.pdf.*

[10] ''Additional Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards,'' U.S. Environmental Protection Agency, 83 FR 25776, June 4, 2018, *https://www.gpo.gov/fdsys/pkg/FR-2018-06-04/pdf/2018-11838.pdf.*

[11] The rulemaking is listed on the Office of Management and Budget's Unified Agenda of Regulatory and Deregulatory Actions. For more information, go to: *https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201710&RIN=2008-AA03.* In the Agenda, the rulemaking appears as: ''Federal Implementation Plan for Oil and Natural Gas Sources; Uintah and Ouray Indian Reservation in Utah.''

[12] See 81 FR 35943, 35946, June 3, 2016, *https://www.gpo.gov/fdsys/pkg/FR-2016-06-03/pdf/2016-11969.pdf.*

[13] See 81 FR 35943, 35975, June 3, 2016, *https://www.gpo.gov/fdsys/pkg/FR-2016-06-03/pdf/2016-11969.pdf.*

That decision is made in consideration of comments received in response to the EPA's proposal and various other factors, including the extent and nature of the particular air quality concerns in the Uinta Basin, the nature of the nonattainment designation (*e.g.,* Marginal nonattainment), the protections and controls associated with the National O&NG FIP, and the recent nature and extent of oil and natural gas development in the Uinta Basin.

Moreover, the CAA provides the EPA with significant authority to manage air quality in Indian country.[14] Here, the EPA is exercising that authority judiciously, consistent with the goals and basic requirements of the statute. The National O&NG FIP remains inapplicable to non-attainment areas, but the EPA has used our authority in a limited manner to extend the reach of the National O&NG FIP to only the Indian country portion of the Uinta Basin Ozone Nonattainment Area. As discussed below, we believe that the area will have adequate air quality protection in the near future as sources expanding or locating in the U&O Reservation adopt emissions controls required by the National O&NG FIP. This process is reasonable and adequately protective of air quality, while ensuring the Ute Indian Tribe can continue to benefit from economic development and industry can properly plan its activities. Commenters will have an opportunity to comment on the measures in the U&O Reservation-specific FIP that we will propose for the area to further protect its air quality in the longer term.

The narrow extension of the National O&NG FIP reflected in this rule will provide coverage under the National O&NG FIP for the Indian country portion of the Uinta Basin Ozone Nonattainment Area now that the EPA's nonattainment designation of a portion of the Uinta Basin is effective. The EPA's work on a separate rulemaking to establish a U&O Reservation-specific FIP remains ongoing and may be completed before the start of the 2019–2020 winter season in the Uinta Basin. Nonetheless, while the EPA continues its work on the U&O Reservation-specific FIP, we have decided to finalize this action before that work is completed. We believe that this approach is reasonable and appropriate for several reasons, as discussed in this notice, including:

First, the National O&NG FIP will help ensure that emissions from new and modified true minor sources are well-controlled.[15] In particular, it requires that all new and modified oil and natural gas production facilities and natural gas processing plants comply, as applicable, with eight federal emission standards—five New Source Performance Standards and three National Emissions Standards for Hazardous Air Pollutants.[16] These standards control emissions of VOC, NO_X, sulfur dioxide, particulate matter (PM, PM_{10}, $PM_{2.5}$), hydrogen sulfide, carbon monoxide and various sulfur compounds from the following units/processes in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector: Compression ignition and spark ignition engines; process heaters; combustion turbines; fuel storage tanks; glycol dehydrators; completion of hydraulically fractured oil and natural gas wells; reciprocating and centrifugal compressors (except those located at well sites); pneumatic controllers; pneumatic pumps; storage vessels; and fugitive emissions from well sites, compressor stations and natural gas processing plants. We believe that these controls are sufficiently strict that authorizing construction of new or modified minor sources, under the relevant circumstances, will allow only modest, incremental increases in emissions, and will be adequately protective of air quality in the U&O Reservation during the period of time following the finalization of this rule, while we complete the separate rulemaking to establish a U&O Reservation-specific FIP.

Second, we believe this is the case especially considering the slower growth of oil and natural gas sources on the U&O Reservation over the past two and a half years since August 2016 when the National O&NG FIP became effective. Since that time, we have seen limited construction of new and modified oil and natural gas sources on the U&O Reservation. Oil and natural gas sources planning to construct on or after October 3, 2016 have been required to either comply with the National O&NG FIP or to seek a minor source permit under the generally applicable (site-specific) permit provisions of the Federal Indian Country Minor NSR rule.[17] Sources complying with the National O&NG FIP are required to meet a two-part registration requirement: The Part 1 Registration Form is submitted 30 days before a source begins construction and contains information about source location and the Part 2 Registration Form is submitted within 60 days after the startup of production and contains information about emissions.[18]

Since October 2016, we have received only 122 Part 1 Registration Forms from sources planning on constructing a new or modified true minor oil and natural gas sources on the U&O Reservation. Of these, only 41 have submitted Part 2 Registration Forms.[19] The 41 sources covered by the Part 2 Forms estimate their total annual allowable (or potential) emissions to be about 623 tons per year (tpy) of VOC emissions,

[14] CAA section 110(a)(2)(C) is part of the foundation for the minor NSR program, and it requires states to submit plans that include programs for the regulation of ''the modification and construction of any stationary source.'' Further, section 110(a)(2)(C) of the CAA requires state plans to include ''a program to provide for the . . . regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D of this subchapter.'' CAA section 110(c) also authorizes the EPA to promulgate a Federal implementation plan in the absence of a satisfactory state plan. CAA section 301(a) generally authorizes the EPA to prescribe regulations as are necessary to carry out its functions under the Act. Section 301(d) of the CAA authorizes the EPA to treat Indian tribes in the same manner as states and directs the EPA to promulgate regulations specifying those provisions of the CAA for which such treatment is appropriate. (CAA sections 301(d)(1) and (2)). It also authorizes the EPA, in circumstances in which the EPA determines that the treatment of Indian tribes as identical to states is inappropriate or administratively infeasible, to provide by regulation other means by which the EPA will directly administer the CAA. (CAA section 301(d)(4)). Acting principally pursuant to that authority, on February 12, 1998, (''Indian Tribes: Air Quality Planning and Management,'' U.S. Environmental Protection Agency, 63 FR 7254, February 12, 1998, *http://www.gpo.gov/fdsys/pkg/FR-1998-02-12/pdf/98-3451.pdf.*) the EPA promulgated what we refer to as the Tribal Authority Rule (TAR). (40 CFR 49.1–49.11). In the TAR, we determined that it was appropriate to treat tribes in the same manner as states for all CAA and regulatory purposes except a list of specified CAA provisions and implementing regulations thereunder. (40 CFR 49.4).

[15] The CAA does not specifically prohibit the construction of new minor sources in designated nonattainment areas like the Uinta Basin Ozone Nonattainment Area. Nor does the CAA specifically require the EPA to engage in any particular analysis before authorizing construction of new or modified minor sources in such areas. Here, the EPA has determined, under the particular circumstances presented, that extending the National O&NG FIP to the Indian country portion of the Uinta Basin Ozone Nonattainment Area, while continuing to develop the U&O Reservation-specific FIP, is adequately protective of air quality.

[16] See 40 CFR 49.105.

[17] See 40 CFR 49.151(c)(1)(iii)(B).

[18] See 40 CFR 49.160(c)(1)(iv).

[19] These numbers (*i.e.,* 122 Part 1 Registration Forms and 41 Part 2 Registration Forms) cover only the period during the National O&NG FIP applied from October 2016 until the during or Uinta Basin nonattainment designation became effective in August 2018. Since August 2018, the EPA has received only one permit application from Encana Corporation/Newfield Exploration Company concerning a source modification; other operators have approached the EPA requesting pre-application meetings to gather information on what would be required for a permit application (Anadarko and Andeavor, in addition to Encana Corporation/Newfield Exploration Company).

the chief pollutant of concern for the winter ozone problem in the Uinta Basin. As compared to the overall VOC emissions inventory in the U&O Reservation (about 72,718 tpy), the increase in total allowable (or potential) emissions represented by these 41 sources is very small (0.9 percent average increase per year). And, as a practical matter, it could be even smaller, since the actual emissions could be less than the allowable emissions.[20] We believe that this low growth rate for new and modified minor sources may continue for the short term, during which time we plan to complete the U&O Reservation-specific FIP.[21]

Third, it is generally accepted in the field of oil and natural gas production that a production well's output (and associated emissions) peaks during the initial period of production and generally declines thereafter over time. That rate of decline is difficult to precisely quantify and can vary from well to well and from basin petroleum play to basin petroleum play. Nonetheless, it is a phenomenon that does occur and is generally accepted.[22] For example, the CAA permitting authorities for several oil and natural gas-producing states allow for the use of a decline factor in calculating potential emissions of production sources.[23] These emissions declines over time are relevant here because declines in emissions from existing oil and natural gas sources in the Uinta Basin could at least partially ''offset'' any increases from new or modified minor sources taking advantage of the streamlined authorization to construct process in the Indian country portion of the Uinta Basin Ozone Nonattainment Area.[24] [25]

Finally, it should be noted that, with the separate U&O Reservation-specific FIP that the EPA intends to pursue, the approach we expect to take goes beyond what comparable nonattainment areas classified as Marginal are required to submit on state-managed lands when an area under state jurisdiction is designated Marginal nonattainment for ozone. Under section 182(a) of the CAA, for the Uinta Basin Marginal Ozone Nonattainment Area for the 2015 ozone standard, a revised State Implementation Plan (SIP) must be prepared for the non-Indian country portion of the area. Under section 182(a) of the CAA, Marginal ozone nonattainment areas are required to submit and/or address a baseline emissions inventory, a nonattainment NSR permitting program, and general conformity. With respect to nonattainment NSR, new and modified major sources are required to obtain 1.1 tons of emissions offsets for each ton of emissions increase and are subject to stringent emissions controls (called Lowest Achievable Emission Rate). Under section 182(a) of the CAA, a State with a marginal nonattainment area is not required to submit a SIP demonstrating attainment of the ozone NAAQS. The U&O Reservation-specific FIP the EPA plans to propose to do so in an expeditious manner is expected to include emissions reductions measures which will represent more than what comparable areas classified as Marginal are required to submit on state-managed lands. And the nonattainment designation for the Uinta Basin Ozone Nonattainment Area (which includes the U&O Reservation) was only effective in August of last year.

In conclusion, for the multiple reasons stated, the EPA believes that this action—along with the EPA's related, forthcoming action to issue a separate, area-specific FIP—will be protective of air quality on the U&O Reservation, while maintaining a mechanism for authorizing construction that helps ensure continued responsible oil and natural gas production on the U&O Reservation. Even if this action may be regarded as reflecting some difference from how the EPA previously anticipated it would proceed, an agency may change its course and must have ample latitude to adapt their rules and policies to changing circumstances. When an agency changes course, its action ordinarily is not subject to a more searching review, and the agency need only provide a reasoned explanation for its action. To the extent that the EPA's decision to make a limited extension of the application of the National O&NG FIP to the Indian country portion of the Uinta Basin Ozone Nonattainment Area is viewed as a change of course, the EPA's action is permissible under the CAA and the reasons articulated provide a sound basis for this action. The EPA has decided that this approach is a reasonable course, in light of the particular facts and circumstances associated with this specific nonattainment designation, the area in question, the recent nature and extent of oil and natural gas development in the area, the protections afforded by the National O&NG FIP, and the Agency's on-going development of the area-specific FIP. We believe that the action is protective of air quality, meets the requirements of the CAA and provides a much-needed method for streamlining construction authorizations that the Ute Indian Tribe and industry are seeking. Finally, based on feedback from the Ute Indian Tribe leadership, continued oil and natural gas production is important for the maintenance of the local tribal economy, as the Ute Indian Tribe is dependent upon oil and natural gas revenue for its economic prosperity.

III. Background

In the proposed rule,[26] we provided background information on several topics relating to this rulemaking. We suggest interested parties consult the proposed action for that background information, as we are not repeating it here. The following topics were covered in the background discussion: (1) Indian country FIPs, including the Federal Indian Country Minor NSR rule and the National O&NG FIP; (2) areas for which the EPA received comment on the National O&NG FIP relevant to this

[20] See Microsoft Excel spreadsheet titled ''ONGFIP Registrations_3–7–19.xlsx'' in the docket for this rule (Docket ID No. EPA–HQ–OAR–2014–0606).

[21] There are indications, however, that some owners or operators have taken preliminary steps indicative of longer-range plans for greater development in the Uinta Basin, including requesting approvals from the Bureau of Land Management and the Bureau of Indian Affairs. See, for example: (1) *https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=renderDefaultPlanOrProjectSite&projectId=62904&dctmId=0b0003e880ba28f6;* (2) *https://eplanning.blm.gov/epl-front-office/eplanning/legacyProjectSite.do?methodName=renderLegacyProjectSite&projectId=72548;* and (3) *https://eplanning.blm.gov/epl-front-office/eplanning/planAndProjectSite.do?methodName=renderDefaultPlanOrProjectSite&projectId=53899&dctmId=0b0003e88092c30b.*

[22] See ''Analysis of Decline Curves,'' J.J. Arps, British-American Oil Producing Company, Society of Petroleum Engineers, December 1945, *http://www.pe.tamu.edu/blasingame/data/z_zCourse_Archive/P648_15A/P648_15A_Lectures_(working_lectures)/20150402_P648_15A_Lec_15_AIME_1758_(Arps)_%5bPDF%5d.pdf.*

[23] See ''Oil and Gas Production Facilities Chapter 6, Section 2 Permitting Guidance,'' Revised May 2016, page 42, *http://deq.wyoming.gov/media/attachments/Air%20Quality/New%20Source%20Review/Guidance%20Documents/5-12-2016%20Oil%20and%20Gas%20Guidance.pdf.*

[24] This is not to say that the EPA believes that any such general decline trends are sufficient, alone, such that further measures or steps will not be needed to further ensure that the Uinta Basin achieves cleaner air quality and, ultimately, attainment.

[25] In addition, the EPA, as ''Reviewing Authority,'' retains the discretion, even under the National O&NG FIP, to require sources ''to obtain a source-specific permit to ensure protection of the [NAAQS].'' 40 CFR 49.101(b)(3). Accordingly, contrary to the EPA's current expectations, in the event that the extension of coverage of the National O&NG FIP to this nonattainment area may lead to serious concerns about adequate protection of the NAAQS, the EPA retains the authority, notwithstanding the potential availability of the streamlined permitting, to require site-specific permitting.

[26] See 83 FR 20775, 20781–20784, May 8, 2018, *https://www.gpo.gov/fdsys/pkg/FR-2018-05-08/pdf/2018-09652.pdf.*

action; (3) the Uinta Basin air quality and nonattainment designation; and (4) the authority for this action. In terms of updates on the background information since the proposal, the nonattainment designation for the Uinta Basin Ozone Nonattainment Area has been finalized and, as noted, became effective on August 3, 2018.[27]

IV. Amendments to Regulations

For the reasons described above, this action executes two amendments to the National O&NG FIP to extend its application to eligible true minor oil and natural gas sources in the Indian country portion of the Uinta Basin Ozone Nonattainment Area. The FIP provides a streamlined mechanism for authorizing construction of oil and gas sources. We also are also correcting a typographical error in § 49.101(c).

First, this action makes two amendments to the regulation to extend the scope of the FIP to include the area described above. In the first of these two amendments, this action adds a new subparagraph to the CFR, to be codified at § 49.101(e). In the new subparagraph, we narrowly extend the geographic scope of the National O&NG FIP to cover eligible true minor oil and natural gas sources seeking to locate or expand in the Indian country portion of the Uinta Basin Ozone Nonattainment Area. This extension of coverage to this one nonattainment area does not otherwise alter the National O&NG FIP's current geographic coverage of attainment, unclassifiable and attainment/unclassifiable areas regarding the rest of Indian country across the nation. The geographically limited extension is in addition to the current coverage. Under this amendment, true minor oil and natural gas sources in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector wishing to locate or expand in the Indian country portion of the Uinta Basin Ozone Nonattainment Area will also have to meet the criteria under § 49.101(b)(1) to qualify, except for § 49.101(b)(1)(v). Section 49.101(b)(1)(v) contains the requirement governing the primary geographic scope of the National O&NG FIP and prevents the FIP from applying in the Uinta Basin Ozone Nonattainment Area. The new § 49.101(e) displaces existing § 49.101(b)(1)(v) for Indian country within the Uinta Basin Ozone Nonattainment Area—and only for that area of Indian country.

To accomplish this extension, it is also necessary to execute a second amendment to the regulation, to define the boundaries of the Uinta Basin Ozone Nonattainment Area to which the National O&G FIP applies under this final rule. To accomplish this, the EPA incorporates the boundaries for the nonattainment area for the Uinta Basin, or areas within the Uinta Basin, as defined at 40 CFR part 81, Designations of Areas for Air Quality Purposes. This action does not govern the development and final decision of the boundaries for the Uinta Basin Ozone Nonattainment Area. Instead, the regulatory and other processes that have occurred within and outside the EPA and between the EPA and state and tribal governments determined those boundaries, and this action takes those boundaries as given.

Finally, this action makes a typographical correction to § 49.101(c), which currently reads: ''*When must I comply with §§ 49.101 through 49.105?* You must comply with §§ 49.101 through 49.101 on or after October 3, 2016.'' This provision is supposed to reference §§ 49.101 through 49.105, as the title indicates. We are correcting it to read: ''*When must I comply with §§ 49.101 through 49.105?* You must comply with §§ 49.101 through 49.105 on or after October 3, 2016.'' The EPA believes that this is a correction of a self-evident scrivener's error (in that EPA plainly intended the second ''101'' to instead read ''105'') and does not constitute a substantive change of the existing regulatory provision.

V. Summary of Comments and Responses

A. Comments Pertaining to Extending the Applicability of the National O&NG FIP to the Indian Country Portion of the Uinta Basin Ozone Nonattainment Area

Four oil and natural gas industry commenters, one Indian tribe and one state agency commenter supported extending the applicability of the National O&NG FIP to the Indian country portion of the Uinta Basin Ozone Nonattainment Area. As summarized and discussed in the following paragraphs, these commenters cited several main arguments in their support of the amendments.

Comment #1: Two oil and natural gas industry commenters and one Indian tribe commenter agreed with the EPA that extending the National O&NG FIP is an appropriate path forward while the agency works through the nonattainment process for the area.

One oil and natural gas industry commenter stated that the amendments are a reasonable exercise of the EPA's discretion in regulating minor source emissions and that the proposed action is a sensible solution to address emissions from minor source oil and gas operations on tribal land. One oil and natural gas industry commenter and one Indian tribe commenter expressed that the proposed action is a reasonable and environmentally protective way to address emissions during the period between designation and implementation of the attainment plan, while preventing the development in the Basin from coming to a standstill.

Two oil and natural gas industry commenters and one state agency commenter agreed with the EPA's identification of several consequences of not extending the National O&NG FIP to the Indian country portion of the Uinta Basin Ozone Nonattainment Area. The commenters stated that many producers that operate in Indian country have come to rely on the streamlined approach that is available through the National O&NG FIP and will now be required to seek site-specific permits for new and modified sources. The commenters asserted that this would subject O&NG development on the U&O Reservation to variable and uncertain timelines and requirements. One state agency commenter added that, based on discussions with Utah's Division of Air Quality about future permitting requirements for companies that are operating on projects that overlap in and out of Indian country and in and out of attainment and nonattainment areas, it is complicated for government attorneys to understand, and a challenging issue for industry.

Response #1: After considering the comments, the EPA agrees to extend the coverage of the National O&NG FIP to the Indian country portion of the Uinta Basin Ozone Nonattainment Area. We believe that extending coverage is reasonable and can be done in an environmentally protective manner. We recognize that the site-specific permitting that is available as an alternative to the National O&NG FIP poses less certain and more variable timetables and can be more challenging and complicated than the streamlined process. We believe that extending the National O&NG FIP and resuming streamlined authorizations to construct that had been available in the area before the nonattainment designation will help alleviate these concerns.

Comment #2: Four oil and natural gas industry commenters and one Indian tribe commenter agreed with the EPA's position that extending the National O&NG FIP would provide a much-needed, streamlined construction authorization mechanism for the U&O

[27] See 83 FR 25776, June 4, 2018, *https://www.gpo.gov/fdsys/pkg/FR-2018-06-04/pdf/2018-11838.pdf.*

Reservation. One oil and natural gas industry commenter and one Indian tribe commenter noted that it is important that there be a streamlined mechanism for obtaining construction authorization in the Uinta Basin so there is no gap in coverage while the EPA and the Ute Indian Tribe develop and adopt a U&O Reservation-specific FIP for the U&O Reservation. One Indian tribe commenter noted that without the adoption of the proposed amendments to the National O&NG FIP, the EPA would face the administrative burden of processing hundreds of true minor source permits within a short time frame. One oil and natural gas industry commenter noted that the amendments allow the Agency to focus its resources on a reservation-specific regulatory scheme.

Response #2: After considering the comments, the EPA agrees to extend the coverage of the National O&NG FIP to the Indian country portion of the Uinta Basin Ozone Nonattainment Area. We believe that extending coverage of the National O&NG FIP will provide a more efficient and certain path for affected true minor sources. We have sought to minimize the gap in streamlined construction authorizations that began after the nonattainment designation became effective, and we are also working on completing the U&O Reservation-specific FIP. We also agree that extending the National O&NG FIP will enable the Agency to focus on completing the U&O Reservation-specific FIP, instead of having to process site-specific permits.

Comment #3: Three oil and natural gas industry commenters noted that the extension of the National O&NG FIP will help to make sure that the Ute Indian Tribe is treated fairly by avoiding a potential disparity in the regulatory landscape in the newly designated nonattainment area in comparison to surrounding areas and other areas of Indian country covered by the National O&NG FIP. One oil and natural gas industry commenter, referring to the Utah Division of Air Quality's streamlined Permit by Rule process, stated that the extension of the National O&NG FIP will help end the EPA's allegedly discriminatory approach to the development of Tribal minerals.

Response #3: Finalizing this proposal and extending the streamlined authorization process to the Indian country portion of the Uinta Basin Ozone Nonattainment Area will enhance consistency by ensuring that there are similar authorization processes available to sources in Indian country and other areas. In particular, in the portion of the Uinta Basin under Utah jurisdiction, the state has a permit by rule program available that is also streamlined, like the streamlined authorization to construct process provided by the National O&NG FIP. Oil and natural gas sources wishing to construct on lands in the Uinta Basin under Utah jurisdiction are subject to the Utah Administrative Code Chapter R307–401–10 (Permit: New and Modified Sources. Source Category Exemptions).[28] Under Utah's rules, such oil and natural gas sources that are not major sources can simply register with the state and then proceed with construction.[29] This process is substantially similar to what is required of eligible true minor sources that wish to gain coverage under the National O&NG FIP.

The EPA does not agree with the comment that we have engaged in a discriminatory approach relative to the development of tribal minerals. With respect to oil and natural gas new or modified minor sources in Indian country, since October 2016 (and up to August 2018), the streamlined authorization process the National O&NG FIP has been available. As noted, that process is comparable to Utah's permit by rule approach in terms of the degree to which it streamlines the relevant construction authorization process.

Comment #4: Three oil and natural gas industry commenters and one Indian tribe commenter agreed with the EPA's position that use of the National O&NG FIP will continue to be adequately protective of air quality while the EPA follows the process detailed under the CAA that allows time to develop an attainment plan. Specifically, one oil and natural gas industry commenter noted that the National O&NG FIP requires compliance with eight federal emission standards that are required for all new and modified sources and, thus, will allow *de minimis* incremental increases in emissions, while the EPA follows the CAA nonattainment process. One Indian tribe commenter stated that the proposed action correctly noted that the air quality issues in the Uinta Basin will not manifest until winter, and, therefore, these amendments are a reasonable step to protect development in the Uinta Basin from coming to a standstill, while protecting public health and the environment.

Another oil and natural gas industry commenter cited the EPA's language in the EPA's proposal that the ozone problems in the Uinta Basin are limited to the winter season and that preliminary monitoring data from the 2017–2018 winter ozone season across the region shows values well below the 2015 ozone NAAQS, and asserted that extending the current National O&NG FIP to Uinta Basin now will not exacerbate the Basin's wintertime ozone air quality problem in the future.

Response #4: The EPA agrees that the eight emissions standards are sufficiently strict that authorizing construction of new or modified minor sources, under the relevant circumstances, will allow only modest, incremental increases in emissions, and will be adequately protective of air quality in the U&O Reservation during the period in which we establish the U&O Reservation-specific FIP. As noted above in Section II.B. where we compared the process we are adopting here (and with the U&O Reservation-specific FIP to follow) to what is required in the CAA for Marginal ozone nonattainment areas, the approach we intend to take is not unlike the CAA process that occurs when an area under state jurisdiction is designated nonattainment. However, under the CAA, as a Marginal nonattainment area, an attainment plan—or SIP demonstrating attainment—is not required.

The EPA agrees that air quality issues in the Uinta Basin will not manifest until winter and that these amendments are a reasonable step to ensure development in the Uinta Basin from coming to a standstill, while protecting public health and the environment. For the reasons stated above, we believe that the National O&NG FIP will be protective of air quality after this rule is finalized and until the U&O Reservation-specific FIP is finalized (which may be before the next winter ozone season).[30]

[28] See *https://rules.utah.gov/publicat/code/r307/r307.htm* for a list of, and links to, all effective rules under Title R307. Environmental Quality, Air Quality.

[29] Oil natural gas sources that include well sites (as defined at 40 CFR 60.5430a), including centralized tank batteries, that are not major sources (as defined in Utah Administrative Code R307–101–2) and that register with the UDAQ as required by Utah Administrative Code R307–505 (Oil and Gas Industry: Registration Requirements), are exempt from the requirement to obtain an approval order (the UDAQ equivalent of a site-specific NSR permit). The registration program at Utah Administrative Code R307–505 requires the operator of a non-major well site to certify that they are in compliance with a suite of emission unit-specific requirements in Utah Administrative Code R307–506 through R307–510, as applicable (*i.e.,* Oil and Gas Industry Storage Vessels, Dehydrators, VOC Control Devices, Leak Detection and Repair and Natural Gas Engines).

[30] Ozone air quality levels in the Uinta Basin during the winter ''ozone season'' can be quite variable. For example, in 2017–18, preliminary

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Comment #5: Four oil and natural gas industry commenters and one Indian tribe commenter agreed with the EPA's concerns that the U&O Reservation would be adversely affected if the National O&NG FIP did not apply to nonattainment areas. One oil and natural gas industry commenter noted that, due to permitting delays in the affected area, operators may divert operating capital to areas where there are more predictable regulatory requirements in state jurisdiction where the Utah Division of Air Quality ''Permit by Rule'' exists, thus denying the economic benefits of oil and gas developments to the U&O Reservation. One oil and natural gas industry commenter and one Indian tribe commenter expressed that the amendments will encourage a smooth transition (with the streamlined authorization approach) in allowing continued oil and gas operations to occur on tribal lands within the Uinta Basin in the wake of the nonattainment designation, as well as prevent further regulatory burdens that have historically served as a disincentive for the development of oil and gas resources on the U&O Reservation.

Response #5: After considering the comments, we believe that the approach in the final rule will both protect air quality and avoid potential permitting delays that could accompany site-specific permitting, which may lead operators to look outside the U&O Reservation for oil and gas development opportunities. In addition, through this rulemaking, the EPA is seeking to ensure a consistent set of regulatory requirements for oil and natural gas activity between Indian country lands within the U&O Reservation and lands under state of Utah jurisdiction. Finally, the EPA agrees that this final rule will help with the transition for the U&O Reservation from being in an area designated as unclassifiable to being included in the Uinta Basin Ozone Nonattainment Area.

Comment #6: Three oil and natural gas industry commenters and one Indian tribe commenter agreed with the EPA's position that use of the National O&NG FIP, after designation of the Uinta Basin as an ozone nonattainment area, will continue to be adequately protective of air quality while the EPA follows the process detailed under the CAA that allows areas time to develop an attainment plan.

Response #6: After considering the comments, the EPA agrees with the comment in part. We believe that the National O&NG FIP will be protective of air quality as we develop the U&O Reservation-specific FIP, which we intend to issue by the start of the next winter ozone season. Specifically, the terms and conditions of the construction authorization permitted by the National O&NG FIP will help protect air quality. To further protect air quality in the Uinta Basin, the EPA continues to develop the U&O Reservation-specific FIP.

Comment #7: One oil and natural gas industry commenter expressed that the industry's objective is that final regulations protect the environment and the public and cost-effectively address VOC emissions that as a co-benefit also reduce methane emissions, without unnecessarily hampering manufacturing and business expansion. According to the commenter, this objective can be met while the private sector develops and delivers more natural gas and oil to its customers. According to the oil and natural gas industry commenter, their efforts are producing real results based on the EPA's latest Greenhouse Gas Inventory which continues to show a downward trend in methane emissions, even as U.S. oil and natural gas production rose dramatically. The commenter reported that the inventory report indicates that methane emissions from natural gas systems and petroleum systems increased 14 percent between 1990 and 2016, at a time when the natural gas output increased by more than 50 percent. This is in addition to the U.S. continuing to lead the world in reducing carbon emissions, which are at 25-year lows, largely due to the increased use of natural gas.

Response #7: After considering the comments, the EPA believes that it is possible, as the commenter suggests, to protect the environment and public health by controlling VOC emissions from oil and natural gas activity in a cost-effective manner, while also ensuring responsible oil and natural gas development. The EPA also recognizes the trends found in an EPA report on greenhouse gas emissions, but because they are not relevant to this rulemaking we find it unnecessary to provide a response here.[31]

Comment #8: Three oil and natural gas industry commenters and one Indian tribe commenter were opposed to a temporary implementation of the proposed amendments. One oil and natural gas industry commenter noted that classifying this proposal as a permanent construction authorization mechanism for the Uinta Basin will conserve resources as the Agency will not have to reinvent a new scheme when a temporary extension would expire. One oil and natural gas industry commenter and one Indian tribe commenter stated that they agree with the EPA's concern that a temporary extension of the National O&NG FIP could have a significant effect on oil and natural gas activity on the U&O Reservation, with a resulting serious effect on the revenue which the Ute Indian Tribe relies upon for its livelihood.

Response #8: After considering the comments, the EPA agrees to finalize the extension of the National O&NG FIP to the Indian country portion of the Uinta Basin Ozone Nonattainment Area, without expressly providing that it is temporary, to provide certainty to the Ute Indian Tribe and to the affected oil and natural gas companies that operate in the U&O Reservation. Deciding not to make the extension temporary will help the tribal leadership plan their services and activities on the U&O Reservation, knowing that they can rely on the important revenue from oil and natural gas activity. It also helps the affected oil and natural gas companies operating in the U&O Reservation as they plan their activities in the Uinta Basin and decide where to locate or expand their activities. The EPA believes that extending the streamlined authorization approach to the Indian country portion of the Uinta Basin Ozone Nonattainment Area will be adequately protective of air quality for the reasons outlined in Section II.B. above.

B. Legal Authority To Extend Applicability of the National O&NG FIP to the Indian Country Portion of the Uinta Basin Ozone Nonattainment Area

Comment #9: One oil and natural gas industry commenter stated that the EPA has the legal authority to extend the National O&NG FIP to an area designated as nonattainment. According to the commenter, the EPA has legal authority to extend the National O&NG FIP to all parts of the U&O Reservation, including nonattainment areas, citing CAA section 301(d) as granting the EPA authority to treat Indian tribes the same as states under the CAA, when appropriate. The commenter, quoting language from EPA's published proposal

monitoring data for the winter ozone season from across the region show values well below the 2015 ozone NAAQS. Preliminary information from the recent 2018–19 season, on the other hand, show values above the standards. See Microsoft Excel spreadsheets titled: ''Uinta Basin Ozone Data, Dec. 2017–Feb. 2018,'' ''2018 Duchesne_data.csv,'' ''2019 Duchesne_data.csv,'' ''2018 Uintah_data.csv,'' and ''2019 Uintah_data.csv,'' Docket No. EPA–HQ–OAR–2014–0606.

[31] Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990–2016, U.S. Environmental Protection Agency, EPA 430–R–18–003, April 2018, *https://www.epa.gov/sites/production/files/2018-01/documents/2018_complete_report.pdf.*

(83 FR at 20780), asserts that this authority extends to all areas, including nonattainment areas.

The commenter asserted that the CAA's nonattainment provisions are consistent with the EPA's proposal to apply the existing National O&NG FIP to address the time between designation and implementation of the attainment plan for the Uinta Basin. According to the commenter, CAA sections 110, 172, and 173 require nonattainment areas to have permitting programs for new or modified major stationary sources in nonattainment areas and, for both attainment and nonattainment areas, regulation of all stationary sources as necessary to assure achievement of the NAAQS. The commenter asserted that the CAA does not establish specific requirements for how nonattainment implementation plans should address true minor sources and that states (and the EPA) have wide discretion in addressing true minor sources. According to the commenter, the CAA does not require reservation-specific or area-specific FIPs, let alone require them immediately after nonattainment designations are made.

The commenter stated that the EPA's statements in the proposed and final rule issuing the National O&NG FIP do not preclude this action and the proposed extension is not contrary to such previous statements because the EPA currently lacks the necessary information and input to issue an area-specific FIP. The commenter stated that the proposal will protect air quality and allow for oil and natural gas development while the EPA undergoes the process of determining how to bring this area back into attainment and that the EPA's position stated in the National O&NG FIP preamble concerning the need for an area-specific FIP before extending the National O&NG FIP to nonattainment areas is not required by the CAA and does not bind the EPA in this rulemaking, citing *FCC* v. *Fox Television Stations, Inc.*

Response #9: After considering the comments, the EPA agrees that, consistent with the authorities and requirements of sections 301(d)(4) and 110(a)(2)(C) of the CAA and 40 CFR 49.11, we possess the authority to take this action amending the National O&NG FIP to extend it to eligible true minor oil and natural gas sources in the Indian country portion of the Uinta Basin Ozone Nonattainment Area. In addition, we recognize that the CAA does not specifically or expressly prescribe detailed requirements for the treatment of new and modified true minor sources in nonattainment areas and that the EPA has discretion in developing measures for Indian country nonattainment areas. To the extent that the commenter's statements relate to the timing or content of an area-specific FIP, those comments are better addressed in the context of that rulemaking, but the EPA does not agree that it is necessary to gather significantly more information before proceeding to propose the U&O Reservation-specific FIP.

C. Non-Air Quality Impacts of Extending or Not Extending the National O&NG FIP to the Indian Country Portion of the Uinta Basin Ozone Nonattainment Area

Comment #10: Two oil and natural gas industry commenters stated that amending the National O&NG FIP will facilitate the continued development of tribal minerals and land and provide an uninterrupted and valuable source of income to the Ute Indian Tribe. One of the commenters further stated that the development of oil and natural gas resources is a huge economic opportunity and job creator for the Ute Indian Tribe and is vitally important.

Response #10: After considering the comments, the EPA recognizes that revenue from oil and natural gas activity in the U&O Reservation is important for the Ute Indian Tribe's prosperity. It provides for economic development and services for tribal members. As the EPA crafts solutions for the U&O Reservation's air quality challenges, the EPA remains cognizant of these facts.

Comment #11: Two oil and natural gas industry commenters noted that one benefit of these actions is the creation of a needed streamlined mechanism for authorizing oil and gas construction in the Uinta Basin Indian country and the U&O Reservation.

One oil and natural gas industry commenter added that the proposal conserves Agency resources because the Ute Indian Tribe and the EPA will not have to process and issue site-specific permits, which allows the Agency to instead focus time and energy on working with the Ute Indian Tribe and stakeholders to develop an appropriate U&O Reservation-specific FIP. This commenter expressed that the proposal will achieve consistency between Uinta Basin Indian country and basin lands under state of Utah jurisdiction by creating a ''self-executing'' authorization scheme for new and modified minor sources of emissions in the tribal air shed that is similar to the current state of Utah's R–307 series of rules for oil and natural gas production or Permit by Rule (''PBR'') Program, for state-managed areas.

Response #11: The EPA generally agrees with these comments. This action will provide a streamlined construction authorization mechanism, allowing the EPA to focus its efforts on issuing the U&O Reservation-specific FIP and helping to achieve consistency of approach for authorizing sources to construct on Indian country lands within the Uinta Basin versus adjacent Utah state-managed lands, as discussed above. The EPA does not agree, however, that this action will conserve Ute Indian Tribe permitting resources, because the Ute Indian Tribe is not currently authorized to issue CAA minor source permits on its Reservation.

D. Timing of Nonattainment Designation Process for Newly Designated Indian Country Areas as it Relates to Timing of This Rulemaking Action

Comment #12: Two oil and natural gas industry commenters encouraged the EPA to finalize this rule revision as close to the nonattainment designation becoming effective on August 3, 2018, as possible to minimize any gaps between the effective dates of both actions. One oil and natural gas industry commenter noted that consequences and hardships can be avoided by meeting that date, such as the absence of a streamlined construction authorization mechanism, the significant pressure and time constraints associated with processing individual permits under a novel site-specific permitting program, and redirection of Agency focus from development of the reservation-specific regulations.

Response #12: After considering the comments, the EPA agrees and has sought to minimize the lapse in streamlined authorizations to construct that started after August 3, 2018. Because there is a gap, though, the EPA has committed the staff resources as needed to process any site-specific permits in a timely manner. In addition, until the nonattainment area designation became effective, sources could have taken advantage of the streamlined mechanism of the existing National O&NG FIP, provided such sources were able to meet certain registration form submittal deadlines.[32]

[32] As noted, the National O&NG FIP registration requirement consists of two parts: Part 1 is submitted 30 days before a source begins construction; Part 2 is submitted within 60 days after the startup of production. In our view, Part 1 Registration Forms that were submitted before the effective date of the nonattainment designation (August 3, 2018) allow sources to begin construction after the effective date of the designation. Thus, Part 1 Registration Forms filed prior to the nonattainment designation taking effect (on August 3, 2018) allowed construction to begin after that date. (It is important to note that any such

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E. Uintah and Ouray Reservation-Specific FIP

1. Timing of U&O Reservation-Specific FIP

Comment #13: One oil and natural gas industry commenter supported the EPA's intention to use the same process for nonattainment areas on tribal lands as the states generally use for all other nonattainment areas. The commenter agreed with the EPA that the proposal is similar to how nonattainment areas in states are treated, where there is a gap in time between the nonattainment designation and the deadline for the attainment plan. The commenter expressed the view that the process used on tribal lands should align with other nonattainment areas, which allows for a period of time to develop a plan to achieve attainment. The commenter argued that states are not under any obligation to immediately have an implementation plan for nonattainment areas and there is no reason that the EPA should single out the U&O Reservation for different treatment by imposing this strict timeline. According to the commenter, the EPA should focus its efforts on developing the best plan to reach attainment and this planning process must involve appropriate stakeholder outreach and input.

Response #13: While the U&O Reservation-specific FIP is an important component of the EPA's approach to addressing the U&O Reservation as part of the Uinta Basin Ozone Nonattainment Area, this rulemaking is not the appropriate context in which to address comments on the specifics of the forthcoming U&O Reservation-specific FIP. Therefore, as a general matter, the EPA will not be responding, here, to comments on any such U&O Reservation-specific FIP, including the timing of such FIP. Concerning the development process and stakeholder engagement for that FIP, the EPA is committed to working closely with the Ute Indian Tribe, as well as the state of Utah and other interested stakeholders.[33]

2. Consistency With Utah's R–307 Series of Rules for Oil and Natural Gas Production

Comment #14: One oil and natural gas industry commenter acknowledged the EPA's commitment to develop a U&O Reservation-specific FIP and encouraged the EPA to develop the FIP with requirements that are equivalent to or consistent with the Utah Division of Air Quality Permit by Rule to mitigate potential disparities between state and federal air jurisdictions.

Response #14: As noted, while the U&O Reservation-specific FIP is an important part of the EPA's approach to the U&O Reservation as part of the Uinta Basin Ozone Nonattainment Area, this rulemaking is not the appropriate context in which to address comments on the specifics of the forthcoming U&O Reservation-specific FIP. Therefore, as a general matter, the EPA will not be responding, here, to comments concerning such FIP.

3. Stakeholder Engagement

Comment #15: Four oil and natural gas industry commenters and one Indian tribe commenter expressed interest in the opportunity to work with the Agency on the development of the U&O Reservation-specific FIP and the identification of proper emission controls that will result in a direct reduction of ozone in the Uinta Basin. One Indian tribe commenter indicated interest in continuing consultation with the Agency about the unique characteristics of the reservation and to balance the regulation with the Ute Indian Tribe's interests in developing its resources without harming future natural resource and economic development.

Two oil and natural gas industry commenters encouraged the EPA to engage stakeholders, including the Ute Indian Tribe, trade associations and operators in advance of proposing the U&O Reservation-specific FIP. One oil and natural gas industry commenter recommended a collaborative stakeholder engagement process, modeled after the stakeholder program implemented by Wyoming Department of Environmental Quality that established the Upper Green River Basin Air Quality Citizens Advisory Task Force. According to the commenter, the stakeholder outreach process should contain highly inclusive public outreach early in the planning process, involvement of stakeholders in advance of development of formal plans to seek additional emission reductions, continuous engagement throughout the duration of the attainment planning process, a process specific to the Basin's unique winter ozone air quality problem that drives the nonattainment designation, and a mechanism to allow for transparent and collaborative dialog with all parties.

Response #15: The comments concerning the process for development of the U&O Reservation-specific FIP are not material to this action amending the existing National O&NG FIP and the EPA is not responding to them here. However, the EPA notes that, consistent with the federal government's trust responsibility and established EPA policy and to improve our understanding of the potential environmental implications of oil and natural gas production operations, the Agency has consulted (and will continue to consult) with the Ute Indian Tribe on issues related to this action and to the U&O Reservation-specific FIP. We appreciate the importance of oil and natural gas activity for the U&O Reservation, as expressed to us by the Tribe during our government-to-government consultations.

We have held numerous consultations with the Ute Indian Tribe, and participated in numerous tribally-convened stakeholder and other meetings, in 2015, 2016, 2017, 2018 and 2019. We have also reached out to the following stakeholders: (1) Oil and natural gas operators and representatives; (2) environmental groups; (3) Federal Land Managers; and (4) local county officials. These consultations and meetings addressed, at least in part, the issue that has prompted this rulemaking, *i.e.,* the need expressed by the Ute Indian Tribe and others for continued streamlined authorizations to construct to continue to be available on the U&O Reservation as part of the Uinta Basin Ozone Nonattainment Area. For a complete list of these consultations and meetings, including dates, locations and attendees, please consult the docket to this rulemaking.[34]

A significant purpose of the government-to-government consultations was to receive tribal comments and concerns for consideration by the EPA as it developed this action. The purposes of the EPA, Tribe, and UDEQ meetings were to discuss our intent to address ozone issues in the Uinta Basin and to solicit input on potential solutions to the region's air quality problem, while ensuring continued resource development. We strive to provide greater regulatory certainty and consistency across the Uinta Basin in the regulation of these operations through enhanced data collection and analysis, improved information sharing

sources may be subject to future control under a U&O Reservation-specific FIP.) See correspondence: Letter from Peter Tsirigotis, Director, Office of Air Quality and Standards, EPA, to Doug Jordan, Newfield Exploration Company, June 6, 2018, in Docket ID No. EPA–HQ–OAR–2014–0606.

[33] For more discussion of stakeholder engagement, see the response to Comment #15.

[34] ''Meetings and Consultations Held with the Ute Indian Tribe Concerning at Least Partly the National Oil and Natural Gas Federal Implementation Plan for Indian Country,'' March 26, 2019, EPA–HQ–OAR–2014–0606.

and partnerships, and focused compliance assistance and enforcement. The EPA is committed to working closely with the Ute Indian Tribe, the state of Utah and other stakeholders during the U&O Reservation-specific FIP development process.

4. Other Construction Permitting Options for U&O Reservation

Comment #16: One Indian tribe commenter requested that the EPA work with the Ute Indian Tribe to mitigate air quality impacts during the winter ozone season. The commenter stated that the Tribe seeks to make sure all options are evaluated for permitting in the development of the U&O Reservation-specific FIP so that the best permitting solutions can be achieved. The commenter asserted that the National O&NG FIP on the U&O Reservation should not be the only option available for authorizing construction on the Reservation once the U&O Reservation-specific FIP is developed. The commenter requested that the EPA remain open to other flexible, targeted controls and permitting schemes or mechanisms for inclusion in the U&O Reservation-specific FIP that will be key to bringing the Uinta Basin back into attainment, including a streamlined permitting system for minor modifications at major sources and synthetic minor sources.

Response #16: Again, the EPA is not responding, here, to comments concerning the development of the U&O Reservation-specific FIP. The EPA is committed to continuing to work with the Ute Indian Tribe to find permitting solutions for the U&O Reservation that protect air quality and address the needs of the Tribe. Specifically, the EPA is willing to engage in discussions with the Tribe about permitting mechanisms and other regulatory options in Indian country that may apply in lieu of or in addition to the National O&NG FIP (*i.e.,* general permits and synthetic minor permits).

F. Out-of-Scope Comments

Comment #17: Four anonymous commenters did not address the proposal and included general comments on the oil and natural gas industry, greenhouse gases and other environmental concerns.

Response #17: Because these comments are out of scope and do not relate to this action, the EPA is not providing responses to them as part of this final rulemaking.

VI. Statutory and Executive Order Reviews

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

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is an Executive Order 13771 deregulatory action. This final rule provides meaningful burden reduction by extending the streamlined authorization-to-construct method for true minor new and modified oil and natural gas sources. The streamlined authorization, which was established by the EPA in 2016, reduces the resource burden on the permitting authority and regulated community associated with submitting and reviewing permit applications for these sources in attainment, unclassifiable and attainment/unclassifiable areas. This action finalizes the extension of streamlined authorizations to the Indian country portion of the Uinta Basin Ozone Nonattainment Area.

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the Federal Indian Country Minor NSR rule and has assigned OMB control number 2060–0003.[35] This action amends the National O&NG FIP, which provides a mechanism for authorizing construction for true minor sources in the oil and natural gas production and natural gas processing segments of the oil and natural gas sector locating or located in areas covered by the Federal Indian Country Minor NSR rule to satisfy the requirements of that rule other than by obtaining a site-specific minor source permit. Because it substitutes for a site-specific permit, which would contain information collection activities covered by the Information Collection Request for Federal Indian Country Minor NSR rule issued in July 2011, neither the proposed amendments, nor the National O&NG FIP, impose any new obligations or enforceable duties on any state, local or tribal government or the private sector. In fact, the final amendments should have the effect of reducing paperwork burden on sources wishing to locate or expand in the Indian country portion of the Uinta Basin Ozone Nonattainment Area, as the amendments provide an alternative to site-specific permitting for such sources.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. The EPA analyzed the impact on small entities of streamlined permitting under the Federal Indian Country Minor NSR rule[36] and determined that it would not have a significant economic impact on a substantial number of small entities. (By allowing sources to avoid having to obtain site-specific permits, this action also will relieve regulatory burden.) This action merely implements a particular aspect of the Federal Indian Country Minor NSR rule. We have, therefore, concluded that this action will have no net regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate, as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector. It simply modifies one option for sources to comply with the Federal Indian Country Minor NSR rule. The CAA and the Federal Indian Country Minor NSR rule itself, not this final action, impose the obligation that true minor sources in areas covered by the Federal Indian Country Minor NSR rule obtain a minor source NSR permit prior to commencing construction. This final action merely applies the National

[35] Since the Federal Indian Country Minor NSR rule was promulgated, the Information Collection Request has been renewed and approved by OMB twice. The most recent approval extended the ICR until October 31, 2020. The ICR covers the activities of the National O&NG FIP. For more information, go to: *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201702-2060-005.*

[36] ''Review of New Sources and Modifications in Indian Country,'' U.S. Environmental Protection Agency, 76 FR 38748, July 1, 2011, *https://www.federalregister.gov/articles/2011/07/01/2011-14981/review-of-new-sources-and-modifications-in-indian-country.*

O&NG FIP to the Indian country portion of the Uinta Basin Nonattainment Area, which includes a streamlined mechanism for authorizing construction for meeting the obligation of the Federal Indian Country Minor NSR rule.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action has tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. Consistent with the EPA Policy on Consultation and Coordination with Indian Tribes (May 4, 2011),[37] the EPA offered consultation on the concerns addressed in this final action, which include the lack of a streamlined permitting for the U&O Reservation should the area be designated nonattainment. The EPA conducted outreach on the issues addressed by the previous rule through ongoing monthly meetings with tribal environmental professionals in the development of the proposed action.[38] We have held numerous consultations with the Ute Indian Tribe, and participated in numerous tribally-convened stakeholder and other meetings, in 2015, 2016, 2017, 2018, and 2019. We have also reached out to the following stakeholders: (1) Oil and natural gas operators and representatives; (2) environmental groups; (3) Federal Land Managers; and (4) local county officials. These consultations and meetings addressed, at least in part, the issue that has prompted this rulemaking, *i.e.,* the need expressed by the Ute Indian Tribe and others for continued streamlined authorizations to construct to continue to be available on the U&O Reservation as part of the Uinta Basin Ozone Nonattainment Area. For a complete list of these consultations and meetings, including dates, locations and attendees, please consult the docket to this rulemaking.[39]

This action reflects tribal concerns about, and priorities for, developing a streamlined approach for permitting true minor sources in the oil and natural gas sector in areas covered by the Federal Indian Country Minor NSR rule in the Uinta Basin Ozone Nonattainment Area. As these amendments are implemented, we will continue to provide regular outreach to tribes to ensure we address issues concerning the National O&NG FIP, if and when they arise. The EPA is available for consultation with any interested tribe.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. The action merely implements a previously-promulgated FIP for oil and natural gas sources in Indian country.[40]

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

This action does not involve technical standards.

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

The EPA believes the amendments in this action will not have potential disproportionately high and adverse human health or environmental effects on minority or low-income populations. Through these amendments, we are: (1) Extending geographically the National O&NG FIP and its mechanism for authorizing construction that effectively provides a streamlined method for implementing a pre-construction permitting program for true minor sources in the oil and natural gas sector in areas covered by the Federal Indian Country Minor NSR rule, and (2) continuing an approach that enables a streamlined process, which helps promote economic development by minimizing delays in new construction.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 49

Environmental protection, Administrative practices and procedures, Air pollution control, Indians, Indians—law, Indians—tribal government, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 2, 2019.

Andrew R. Wheeler,

Administrator.

For the reasons set forth in the preamble, 40 CFR part 49 is amended as follows:

PART 49—INDIAN COUNTRY: AIR QUALITY PLANNING AND MANAGEMENT

■ 1. The authority citation for part 49 continues to read as follows:

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

Subpart C—General Federal Implementation Plan Provisions

■ 2. In § 49.101, revise paragraph (c) and add paragraph (e) to read as follows:

§ 49.101 Introduction.

* * * * *

(c) *When must I comply with §§ 49.101 through 49.105?* You must comply with §§ 49.101 through 49.105 on or after October 3, 2016.

* * * * *

(e) Notwithstanding paragraph (b)(1)(v) of this section, oil and natural gas sources located in the Indian country portion of the Uinta Basin Ozone Nonattainment Area are subject to §§ 49.101 through 49.105 (except for paragraph (b)(1)(v)), provided paragraphs (b)(1)(i) through (iv) of this section are also satisfied.

[37] For more information, go to: *https://www.epa.gov/tribal/epa-policy-consultation-and-coordination-indian-tribes.*

[38] These monthly meetings are general in nature, dealing with many air-related topics, and are not specific to this proposed action.

[39] ''Meetings and Consultations Held with the Ute Indian Tribe Concerning at Least Partly the National Oil and Natural Gas Federal Implementation Plan for Indian Country,'' March 26, 2019, EPA–HQ–OAR–2014–0606.

[40] See 81 FR 35943, June 3, 2016, *https://www.gpo.gov/fdsys/pkg/FR-2016-06-03/pdf/2016-11969.pdf.*

3. In § 49.102, add a definition for ''Uinta Basin Ozone Nonattainment Area'' in alphabetical order to read as follows:

§ 49.102 Definitions.

* * * * *

Uinta Basin Ozone Nonattainment Area means the nonattainment area for the Uinta Basin, or such parts or areas of the Uinta Basin, as it is or may hereafter be defined at 40 CFR part 81, Designations of Areas for Air Quality Purposes.

[FR Doc. 2019–09829 Filed 5–13–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2018–0224; FRL–9993–54–Region 5]

Designation of Areas for Air Quality Planning Purposes; Ohio; Redesignation of the Lake County Sulfur Dioxide Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In accordance with the Clean Air Act (CAA), the Environmental Protection Agency (EPA) is redesignating the Lake County sulfur dioxide (SO_2) nonattainment area from nonattainment to attainment. EPA is also approving Ohio's maintenance plan, which Ohio submitted on April 9, 2018. EPA has approved Ohio's State Implementation Plan (SIP) for Lake County, and the air quality in the area is meeting the SO_2 standard.

DATES: This final rule is effective on May 14, 2019.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2018–0224. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Mary Portanova, Environmental Engineer, at (312) 353–5954, before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Mary Portanova, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–5954, *portanova.mary@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. Background

In 2010, EPA established a revised primary SO_2 national ambient air quality standard (NAAQS) of 75 parts per billion (ppb) (75 FR 35520, June 22, 2010). EPA designated the Lake County area as nonattainment for the 2010 SO_2 NAAQS on August 5, 2013 (78 FR 47191) based upon air quality monitoring data for calendar years 2009–2011. The Lake County nonattainment area is comprised of the entirety of Lake County, Ohio.

Ohio was required to prepare a nonattainment plan that would provide for attainment of the NAAQS by the SO_2 attainment date of October 4, 2018 and meet the requirements of sections 172(c) and 191–192 of the CAA. Ohio submitted its plan on April 3, 2015, and supplemented it on October 13, 2015, and on March 13, 2017. EPA approved the Lake County nonattainment plan on February 14, 2019 (84 FR 3986).

Under CAA section 107(d)(3)(E), there are five criteria which must be met before a nonattainment area may be redesignated to attainment. The relevant NAAQS must be attained in the area; the applicable implementation plan must be fully approved by EPA under section 110(k); the improvement in air quality must be determined to be due to permanent and enforceable reductions in emissions; the State must meet all applicable requirements for the area under section 110 and part D; and EPA must fully approve a maintenance plan and contingency plan for the area under section 175A of the CAA. On March 8, 2019 (84 FR 8492), EPA proposed to find that these five criteria have been met for the Lake County nonattainment area, and thus, EPA proposed to redesignate Lake County from nonattainment to attainment of the 2010 SO_2 NAAQS.

II. Public Comments

EPA received no public comments on the March 8, 2019 proposal to redesignate Lake County.

III. What action is EPA taking?

EPA is redesignating the Lake County nonattainment area from nonattainment to attainment of the SO_2 NAAQS. Ohio has demonstrated that the area is attaining the SO_2 standard, and that the improvement in air quality is due to permanent and enforceable SO_2 emission reductions in the nonattainment area. EPA is also approving Ohio's maintenance plan, which is designed to ensure that the area will continue to maintain the SO_2 standard.

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for these actions to become effective immediately upon publication. This is because a delayed effective date is unnecessary due to the nature of a redesignation to attainment, which relieves the area from certain CAA requirements that would otherwise apply to it. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction,'' and section 553(d)(3), which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. This rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, this rule relieves the State of planning requirements for this $PM_{2.5}$ nonattainment area. For these reasons, EPA finds good cause under 5 U.S.C. 553(d)(3) for these actions to become effective on the date of publication of these actions.

IV. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of the maintenance plan under CAA section 107(d)(3)(E) are actions that affect the status of the geographical area and do

not impose any additional regulatory requirements on sources beyond those required by state law. A redesignation to attainment does not in and of itself impose any new requirements, but rather results in the application of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 15, 2019. 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

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Sulfur oxides.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: May 2, 2019.

Cheryl L. Newton,

Acting Regional Administrator, Region 5.

40 CFR parts 52 and 81 are 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.*

■ 2. In § 52.1870, the table in paragraph (e) is amended under ''Summary of Criteria Pollutant Maintenance Plan'' by adding an entry for ''SO_2 (2010)'' before the entry ''CO (1979)'' to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED OHIO NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Applicable geographical or non-attainment area	State date	EPA approval	Comments
*	*	*	*	*
Summary of Criteria Pollutant Maintenance Plan				
*	*	*	*	*
SO_2 (2010)	Lake County	4/9/2018	5/14/2019 [insert **Federal Register** citation]	
*	*	*	*	*

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 3. The authority citation for part 81 continues to read as follows:

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

■ 4. Section 81.336 is amended by revising the entry ''Lake County, OH'' in the table entitled ''Ohio—2010 Sulfur Dioxide NAAQS (Primary)'' to read as follows:

§ 81.336 Ohio.

* * * * *

OHIO—2010 SULFUR DIOXIDE NAAQS (PRIMARY)

Designated area [1]	Designation	
	Date [2]	Type
* * * * * * *		
Lake County, OH Lake County.	5/14/2019	Attainment.
* * * * * * *		

[1] Includes any Indian country in each county or area, unless otherwise specified. EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the state has regulatory authority under the Clean Air Act for such Indian country.
[2] This date is April 9, 2018, unless otherwise noted.

* * * * *

[FR Doc. 2019–09925 Filed 5–13–19; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 84, No. 93
Tuesday, May 14, 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.

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 124 and 127

RIN 3245–AG75

Women-Owned Small Business and Economically Disadvantaged Women-Owned Small Business—Certification

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) is proposing to amend its regulations to implement a statutory requirement to certify Women-Owned Small Business Concerns (WOSB) and Economically Disadvantaged Women-Owned Small Business Concerns (EDWOSB) participating in the Women-Owned Small Business Contract Program.

DATES: Comments must be received on or before July 15, 2019.

ADDRESSES: You may submit comments, identified by RIN: 3245–AG75, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *For mail, paper, disk, or CD/ROM submissions:* Brenda Fernandez, U.S. Small Business Administration, Office of Policy, Planning and Liaison, 409 Third Street SW, 8th Floor, Washington, DC 20416.
- *Hand Delivery/Courier:* Brenda Fernandez, U.S. Small Business Administration, Office of Policy, Planning and Liaison, 409 Third Street SW, 8th Floor, Washington, DC 20416.

SBA will post all comments on *www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* please submit the information to Brenda Fernandez, U.S. Small Business Administration, Office of Policy, Planning and Liaison, 409 Third Street SW, 8th Floor, Washington, DC 20416, or send an email to *brenda.fernandez@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination on whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Brenda Fernandez, U.S. Small Business Administration, Office of Policy, Planning and Liaison, 409 Third Street SW, Washington, DC 20416; (202) 207–7337; *brenda.fernandez@sba.gov.*

SUPPLEMENTARY INFORMATION: The WOSB Federal Contract Program (hereinafter referred to as the ''Program''), set forth in section 8(m) of the Small Business Act, 15 U.S.C. 637(m), authorizes Federal contracting officers to restrict competition to eligible WOSBs or EDWOSBs for Federal contracts in certain industries. Section 825 of the National Defense Authorization Act for Fiscal Year 2015, Public Law 113–291, 128 Stat. 3292 (December 19, 2014) (2015 NDAA), amended the Small Business Act to grant contracting officers the authority to award sole source awards to WOSBs and EDWOSBs and shorten the time period for SBA to conduct a required study to determine the industries in which WOSBs are underrepresented. In addition, section 825 of the 2015 NDAA amended the Small Business Act to create a requirement that a concern be certified as a WOSB or EDWOSB by a Federal agency, a State government, SBA, or a national certifying entity approved by SBA, in order to be awarded a set aside or sole source contract under the authority of section 8(m) of the Small Business Act. 15 U.S.C. 637(m)(2)(E). The certification requirement applies only to participants wishing to compete for set-aside or sole source contracts under the Program. Once this rule is finalized, WOSBs that are not certified will not be eligible to compete on set asides for the Program. Other women-owned small business concerns that do not participate in the Program may continue to self-certify their status, receive contract awards outside the Program as WOSBs, and count toward an agency's goal for awards to WOSBs. For those purposes, contracting officers would be able to accept self-certifications without requiring them to verify any documentation. SBA is proposing to provide certification, to accept certification from certain identified government entities, and to allow certification by SBA-approved third party certifiers. As part of the changes necessary to implement a certification program, SBA is also proposing to amend its regulations with regard to continuing eligibility and program examinations. SBA is also proposing to adjust the economic disadvantage thresholds applicable to determining whether an individual qualifies as economically disadvantaged for participation in the 8(a) Business Development (BD) Program to make them consistent with the thresholds applicable to whether a woman qualifies as economically disadvantaged for EDWOSB status.

On September 14, 2015, SBA published in the **Federal Register** a final rule to implement the sole source authority for WOSBs and EDWOSBs and the revised timeline for SBA to conduct a study to determine the industries in which WOSBs are underrepresented. 80 FR 55019. SBA did not address the certification portion of the 2015 NDAA in this final rule because its implementation is more complicated, could not be accomplished by merely incorporating the statutory language into the regulations, and would have delayed the implementation of the sole source authority unnecessarily. SBA notified the public that because it did not want to delay the implementation of the WOSB sole source authority by combining it with the new certification requirement, SBA decided to implement the certification requirement through a separate rulemaking.

As part of the process to craft the regulations governing the WOSB/EDWOSB certification program, SBA issued an Advance Notice of Proposed Rulemaking (ANPR) on December 18, 2015. 80 FR 78984. The ANPR solicited public comments to assist SBA in drafting a proposed rule to implement a WOSB/EDWOSB certification program. SBA received 122 comments in response to the ANPR. SBA has reviewed all the comments while crafting this proposed rule and received additional input from interested stakeholders.

This proposed rule also proposes changes to § 124.104(c), to make the economic disadvantage requirements for the 8(a) BD program consistent to the economic disadvantage requirements for women-owned firms seeking EDWOSB

status. The proposed change would eliminate the distinction in the 8(a) BD program for initial entry into and continued eligibility for the program. The economic disadvantage criteria for EDWOSBs equate to the continuing eligibility criteria for the 8(a) BD program. This has resulted in the anomaly of a concern applying for EDWOSB and 8(a) BD status simultaneously and being found to be economically disadvantaged for EDWOSB purposes, but denied eligibility for the 8(a) BD program based on not being economically disadvantaged. This proposed rule intends to make economic disadvantage for the 8(a) BD program consistent to that for a woman seeking to qualify as economically disadvantaged for the EDWOSB program. SBA does not believe that it makes sense to allow a woman to qualify as economically disadvantaged for EDWOSB purposes, but to then be declined from 8(a) BD participation for not being economically disadvantaged.

In addition, SBA notes that in September 2017, SBA awarded a contract to conduct a study to assist the Office of Business Development in defining or establishing criteria for determining what constitutes ''economic disadvantage'' for purposes of firms applying to the 8(a) BD program. The results supported a $375,000 adjusted net worth for initial eligibility, as compared to the current $250,000 threshold. The study did not, however, consider differences in economic disadvantage between applying to the 8(a) BD program and continuing in the program once admitted. Because SBA believes that it is important to have the same economic disadvantage criteria for the 8(a) BD program as for the EDWOSB program, to avoid confusion and inconsistency between the programs, SBA considered applying a $375,000 net worth standard to both the 8(a) BD and EDWOSB programs. SBA concluded that the $375,000 net worth standard may not be appropriate as the standard for determining economic disadvantage because it related to entry into the 8(a) BD program as opposed to participation in the free enterprise system as an economically disadvantaged business owner. As such, this rule proposes to adopt the $750,000 net worth continuing eligibility standard for all economic disadvantage determinations in the 8(a) BD program. SBA specifically requests comments on whether the $375,000 net worth standard or the $750,000 net worth standard should be used for both the 8(a) BD and EDWOSB programs. In particular, SBA requests comments on how the different standards would affect small business owners participating in the federal marketplace.

SBA is proposing to amend 13 CFR 127 subpart C to establish the process by which SBA will certify firms as WOSBs or EDWOSBs. Proposed § 127.300(a) would provide that SBA will provide a free electronic application process to all firms seeking to be certified as WOSBs or EDWOSBs. In the pursuit of speed, efficiency, and ease of administrative burden, applicants would apply online through an electronic application process. Electronic applications are much faster to process than paper applications as the information can be sorted and searched for digitally. Electronic applications force all mandatory fields to be completed, thereby eliminating incomplete applications. Moreover, through electronic applications, notifications can be sent to applicants to confirm receipt of their applications, along with any follow-up electronic correspondence, rather than through time-consuming paper mail. Transitioning to purely electronic applications will also reduce transactions costs for the agency, saving taxpayer dollars in the process. Data analysis will also be enhanced as applications move to be only electronic. The ability to process WOSB and EDWOSB certifications in an expedited fashion will further SBA's mission to increase the number of WOSBs that win Federal Government contracts.

SBA is proposing that applicants would have the opportunity to request reconsideration of an initial decline decision, which would be consistent with the 8(a) BD application process. The contract protest mechanism, allowing interested parties to challenge the WOSB/EDWOSB status of an apparent successful offeror, will remain the same with an appeal right and will serve as a means to ensure that concerns awarded a Federal contract based on their WOSB or EDWOSB certifications are eligible for award.

SBA's regulations currently authorize the following WOSB/EDWOSB certifications: (1) Certification by third party national certifying entities approved by SBA, (2) certification by SBA as a Participant in the 8(a) BD program where the concern is owned and controlled by one or more women, and (3) concerns certified as owned and controlled by women and certified as Disadvantaged Business Enterprises (DBEs) by states pursuant to the U.S. Department of Transportation's (DOT's) DBE program. 13 CFR 127.300(d). Although the current program principally relies on self-certification, it also permits SBA to have non-governmental third party certifiers approved by SBA. SBA approved four non-governmental entities for that purpose as an alternative option for WOSB or EDWOSBs. These entities are not restricted from assessing fees for certification. In the ANPR, SBA sought comments on how those certification processes are working, how they can be improved, and how best to incorporate them into the new certification requirements. Almost all of the 122 comments that SBA received mentioned third party certifiers or their process. Overwhelmingly the commenters urged SBA to craft a system that would be as uniform as possible, with applicants not being treated differently depending on whom they chose for certification purposes. Almost every commenter that mentioned the topic also wanted the certification process by SBA to be free for all applicants. Commenters noted that 8(a) BD program applicants and HUBZone program applicants do not pay a fee for certification. Overall, commenters suggested that SBA create a clear, transparent, consistent, and free certification process. Commenters supportive of authorized third party certifiers offered that speed to certification is one attraction that might be worth the cost. SBA also received comments concerning whether a third party certifier could be a for-profit entity. The legislation does not limit participation as a third party certifier to entities that are non-profit, and SBA is not proposing any limitation. The proposed rule would also require any approved third party certifier to notify an applicant of its fees and the ability to apply online with SBA at no cost.

After evaluating the comments, SBA has determined that the new legislation permits a balance of options for the public. SBA has previously determined that the act of certifying a firm as eligible to receive a federal contract is generally an inherently governmental function. However, the 2015 NDAA specifically gives to SBA the authority to use a non-governmental certifying entity approved by SBA which is unique to the WOSB Program and does not affect inherently governmental authorities for approval as required in the 8(a) BD or HUBZone programs. SBA proposes to exercise this authority and will promulgate the requirements that prospective national certifying entities must adhere to in order to be approved.

SBA also proposes to use existing government entities at the Federal and State levels that have valid certification programs which SBA could accept in

lieu of an SBA only process. In addition to those that will apply directly to SBA for WOSB or EDWOSB certification, or through an approved national entity, the proposed rule would authorize SBA to accept certifications that have been issued by SBA, a Federal agency or State authority under the DOT/DBE program. SBA already certifies firms as eligible for its 8(a) BD and HUBZone programs without concerns being charged a fee for applying. The Department of Veterans Affairs (VA) certifies veteran-owned small businesses (VOSBs) and service-disabled veteran-owned small businesses (SDVOSBs) at no cost through its Center for Verification and Evaluation (CVE). Many veterans are also women. This rule proposes that SBA accept certifications by SBA (for the 8(a) BD and HUBZone programs) and VA that a firm is owned and controlled by women for purposes of WOSB/EDWOSB certification. The DOT DBE program has authority for certifying women under its State-run programs. Similarly, SBA proposes to accept these certifications that a firm is owned and controlled by women as well. SBA is therefore proposing to amend § 127.300 by deleting paragraphs (b) through (f) and explaining that the certification process will be handled by SBA and that SBA will accept, under certain conditions, the aforementioned Federal or State third party certifications.

SBA will accept from the VA, VOSB or SDVOSB certification for women veterans, provided that the business concern is 51% owned and controlled by one or more women who are veterans or service-disabled veterans. VA applies SBA's standards of ownership and control under its Center for Verification and Evaluation (CVE) program. Because VA does not determine economic disadvantage, SBA will only accept VA certifications as evidence of ownership and control by women. Women veterans or service-disabled veterans seeking EDWOSB status would have to apply directly to SBA for this certification. In such a case, SBA would accept VA's determination that the firm is owned and controlled by women, but the firm would still have to demonstrate that the women are economically disadvantaged.

Similarly, SBA will accept the DOT/DBE certification for WOSB eligibility. Because the thresholds of economic disadvantage are different between SBA and DOT's DBE program, SBA cannot accept the economic disadvantage determination of a DBE for the EDWOSB certification. Interested parties seeking EDWOSB status will have to apply directly to SBA for this certification.

SBA believes that there may difficulty in processing all the potential applications of those seeking WOSB or EDWOSB certifications in a timely manner. There are currently approximately 10,000 firms in the WOSB repository. SBA's 8(a) Business Development program processes approximately 3,000 applications a year, and SBA's HUBZone program processes approximately 1,500 applications per year. Because the WOSB/EDWOSB program is being designed so that only firms that have been certified are eligible for contracts through the program, SBA expects a large influx of applications as soon as these rules are finalized. If all those firms currently in the repository seek WOSB/EDWOSB certification from SBA immediately, there most likely will be a delay for many firms seeking certification. SBA is requesting comments on possible solutions to this potential bottleneck. One solution that SBA is considering is to adapt a process similar to that previously used by SBA in certifying firms as small disadvantaged businesses (SDBs) when there was an SDB program. Under such an approach, a firm could submit an offer as a WOSB or EDWOSB if it had submitted an application to SBA and had not received a negative determination regarding that application at the time it submits its offer. A concern would be required to notify the procuring agency of this conditional status in its offer. If a concern then becomes the apparent successful offeror on a WOSB/EDWOSB contract, the contracting officer would notify SBA and SBA would prioritize the firm's application and make a determination within 15 days from the date SBA received the contracting officer's notification. Such a timeframe should not be detrimental since it is the same afforded for size and status protests today. SBA specifically requests comments on this alternative and other possible approaches that would help ease the transition from self-certification to a required certification program.

Proposed § 127.301 and § 127.306 would provide guidance on how a concern may apply to the WOSB/EDWOSB Program. Proposed § 127.301 would provide guidance on initial applications, and proposed § 127.306 would address the procedures for denied applications and decertifications. Proposed § 127.305 would provide that WOSB Program applicants will be permitted to request reconsideration, within 30 calendar days of notification of an initial decline decision. In proposed § 127.306, SBA would require a one-year waiting period for a concern to re-apply after a decline or decertification. Currently the 8(a) BD program requires a concern to wait one year to reapply after a denied application. 13 CFR 124.207. SBA will render a final decision within 60 calendar days of a reconsideration request. In response to the SBA ANPR, many commenters requested that SBA adopt an appeal process for denied applications similar to the 8(a) BD development program. Other commenters wanted to emphasize giving concerns an ability to ask SBA to reconsider the application and make changes. SBA's HUBZone certification process does not currently utilize an appeal or reconsideration process. SBA is not proposing to adopt an appeal process similar to the 8(a) BD program for the WOSB Program, but would allow concerns the ability to request reconsideration. SBA believes that the reconsideration process should be sufficient for a firm to understand its deficiencies and come into compliance with the HUBZone eligibility requirements.

Proposed § 127.302 would provide information on how a concern may apply for certification. SBA is proposing to process all applications online. SBA is currently already processing all 8(a) BD program and HUBZone program applications electronically, and this would be an extension of that application process to the WOSB Program. Current participants in the WOSB Program have been using *https://certify.sba.gov* to self-certify for the past year.

Proposed § 127.303(a) would describe the information and documents that must be submitted during the electronic application process. In the ANPR, SBA requested comments on what information and documents should be collected during an application. Most commenters believed that SBA should continue to collect the documents listed in the current version of § 127.300(e). SBA agrees with these comments and while that list is not exhaustive, SBA believes that it is illustrative of the amount and types of documents that SBA will be collecting during the electronic application process. SBA is proposing to maintain the list of required documents on its website, and that the list of required documents ''may include, but is not limited to, corporate records, and business and personal financial records, including copies of signed Federal personal and business tax returns, individual and business bank statements.'' This is similar to the approach of SBA's other programs, in which SBA provides more detail of the documents required on SBA's website as well as part of the application process.

Proposed § 127.303(b) would make clear that SBA may need to request additional documents during the application process in order to confirm eligibility. Proposed § 127.303(c) would state that it is the concern's responsibility to notify SBA of any changes that could affect the firm's eligibility while SBA is reviewing the application. SBA is proposing to add new paragraphs § 127.303(d) and (e) to detail the additional information that concerns reapplying after a denial or decertification are required to submit. The proposed rule provides that concerns reapplying for certification will have to submit information showing what changes have been made to remedy the issues of ineligibility in the initial application.

Proposed § 127.304 would detail how SBA will process applications. WOSB program applicants will have their packages reviewed, similar to the 8(a) BD program, within 15 calendar days for completeness of an application. Concerns will be notified if required information is missing, and that SBA will not process incomplete applications. SBA proposes that it will make its determination within 90 days after a concern submits a complete application. This is consistent with the time frames and policies established for SBA's other certification programs. The 90-day time frame will not begin to run on submitted but incomplete applications. SBA proposes that after a complete application is submitted, SBA could still need additional information from an applicant. Proposed paragraph (c) would provide that it is the applicant's responsibility to demonstrate its eligibility and that SBA could draw adverse inferences when a concern fails to provide documents and information that SBA has requested. Proposed paragraph (d) would provide that a concern must be eligible when it applies, and must maintain its eligibility throughout the time SBA is evaluating its application. Proposed paragraph (e) would provide that any changes in circumstances may be relevant to a concern's eligibility, that a concern has an affirmative duty to notify SBA of any changes, and that SBA may decline to certify a concern that fails to notify SBA of changed circumstances. Proposed paragraphs (f) and (g) would provide that any decision regarding an application will be in writing. Proposed paragraph (f) would also state that it will be SBA's responsibility to update *https://certify.sba.gov* (or any successor system) and the System for Award Management, to indicate the firm has been certified by SBA.

Proposed § 127.305 would authorize a reconsideration process, which would permit a firm found to be ineligible to address deficiencies and change its bylaws, articles of incorporation, or other ownership documents to come into compliance with SBA's ownership and control requirements. As mentioned above, this is consistent with SBA's current application and continuing eligibility process for the 8(a) BD program. The goal of this proposed change is to allow eligible concerns to become certified as quickly as possible, even if there were deficiencies or eligibility issues on their initial applications.

Proposed § 127.306 would provide that concerns may reapply to the program one year after a final decline or decertification decision.

Third Party Certification

SBA is proposing to further amend subpart C of part 127 to establish procedures for Third Party Certification in the context of a required certification program. In proposed § 127.350, SBA is proposing that all Third Party Certifiers (TPCs) must be approved by SBA. Under the proposed rule, an approved TPC need not be a non-profit entity. SBA is also clarifying that a TPC is a non-governmental entity, in contrast to the governmental certifications (8(a), DOT/DBE, VA/CVE) that SBA will accept for WOSB/EDWOSB certification purposes.

SBA is proposing that in order to be certified by a TPC, an applicant must be registered in the System for Award Management (SAM) and must upload all required documents in *certify.gov.* An applicant using a TPC would be required to provide the TPC with access to the documents in *certify.sba.gov.* A firm certified by a TPC would need to upload the written certification from a TPC to *https://certify.sba.gov* (or any successor system). Proposed § 127.352 would provide that SBA will maintain the instructions for becoming a TPC on SBA's website.

Proposed § 127.353(a) would permit TPCs to charge a fee. As noted above, commenters generally favored free certification, but those comments pertained to certification by the Government and other commenters recognized a value to having TPCs in certain instances. SBA notes that any applicant that wishes to have its application for certification processed without a fee would always be able to submit its application to SBA. SBA recognizes that TPCs currently charge a fee to certify WOSBs, and believes that this option should not be eliminated for any applicant seeking the services of a TPC. Further, § 127.353(a)(1) and (2) would provide that all TPCs must notify potential applicants of the free option offered by SBA at the beginning of the application process. In addition, proposed § 127.353(b) would require that the method of the notification must be approved by SBA.

Proposed § 127.354 would provide the certification standards that TPCs must meet. The proposed rule identifies minimum standards that need to be met. As noted above, SBA received suggestions that consistency between certification options offered by various certifiers would be helpful for participants, and help alleviate possible confusion from having multiple certification options. These baseline standards will provide some consistency between various certifiers, ensuring that all certifiers are meeting the same minimum requirements.

Proposed § 127.355 would establish procedures that SBA will utilize to ensure that TPCs are meeting the requirements of subpart D. Specifically, SBA is proposing that it will conduct periodic compliance reviews, and that SBA may revoke its approval of a TPC that is not meeting the requirements.

Proposed § 127.356 would create the process for certification by a TPC. SBA is proposing that concerns submit their applications directly to the TPC, register in SAM, and upload all of the documents to *certify.sba.gov.* The applicant will provide the TPC with access to its documents in *certify.sba.gov.* Once certified, the applicant will upload the approval document to *certify.sba.gov.*

Proposed § 127.357 would address ineligibility determinations made by TPCs. Proposed § 127.357(a) would permit a concern found to be ineligible by a TPC to request reconsideration and a redetermination, at no additional cost to the concern. Proposed § 127.357(a) would also require the TPC to complete the reconsideration process within 60 calendar days. Finally, the proposed rule would prohibit a declined firm from reapplying for WOSB or EDWOSB certification by SBA or a TPC for a one-year period.

SBA is proposing to amend subpart D of part 127 to establish procedures for maintaining a concern's certification as WOSB or EDWOSB and conducting program examinations of WOSB program participants after certification. Proposed § 127.400 would require that concerns recertify their eligibility every three years. SBA proposes that failure to recertify in the time period provided will result in the concern being decertified, and thus removed as a certified WOSB or EDWOSB from the

Dynamic Small Business Search (DSBS) system.

Proposed § 127.401 would establish the ongoing obligations of certified WOSB Program participants. Specifically, this provision would provide that all certified concerns have an affirmative duty to notify SBA of any material changes in writing. Proposed § 127.402 would address the failure of a concern to recertify every three years or to notify SBA of a material change. The proposed language makes clear that such concerns would be decertified.

Proposed § 127.403 pertains to program examinations. Program examinations under the new regulations will serve a similar function as they had previously. However, they will be inherently different with the proposed new SBA certification. Proposed paragraph (a) would establish that an examination is an investigation by SBA to verify the accuracy of any WOSB/EDWOSB certification and to ensure that currently certified concerns continue to meet the eligibility criteria of the WOSB Program. Proposed paragraph (b) would provide that program examinations will be conducted by SBA staff, SBA field staff or others designated by the SBA's Director of Government Contracting (D/GC).

Proposed paragraph § 127.403(c) establishes that the scope of review for examinations is any information that is related to a concern's eligibility. SBA may conduct site visits when appropriate as part of the program examination. Further, proposed paragraph (d) would require that it is the program participant's responsibility to ensure that all required information has been submitted to SBA and that all that information is up to date and accurate. Additionally, this proposed section would provide that all of the required information is considered material by SBA in determining a concern's eligibility and that the information is assumed to be truthful and current.

Proposed § 127.404 would authorize SBA to conduct program examinations at its discretion any time after a concern has submitted an application to be certified. This regulation also clarifies that SBA may initiate an examination of a concern without notification. As noted above, in order to apply to the WOSB program and maintain eligibility a concern must provide SBA with required documents and information. This provision would provide that SBA may review any previously submitted information at any time as part of a program examination. Given that SBA may not need additional information when it begins the examination, it is not necessary to notify concerns that SBA is reviewing material that has already been submitted to SBA. Proposed § 127.405 would make clear that in addition to reviewing material already submitted, SBA may also request additional information when conducting a program examination.

Proposed § 127.406 would authorize SBA to decertify concerns that fail to provide or maintain the required certifications or documents. As noted above, SBA will maintain a list of all the required documents that a concern must provide and keep up-to-date. Concerns that fail to meet this requirement would be proposed for decertification. SBA would also propose decertification for firms that SBA determines no longer meet the eligibility requirements. Concerns would be proposed for decertification pursuant to § 127.406(a). Concerns proposed for decertification would be given 15 calendar days to respond. Proposed § 127.406(a)(3) would be added to establish that SBA will generally not consider new evidence in a response. SBA also proposes to add § 127.406(b) which would state that when a concern is decertified pursuant to this section, the D/GC will issue that decision in writing and will consider all the reasons why the firm was proposed for decertification. Further, this section would provide that SBA may draw adverse inferences when making this eligibility determination. Proposed § 127.406(c) would provide that decertified firms would be able to reapply to the program one year after decertification.

SBA is proposing to remove § 127.505, as the pertinent information in this provision is already detailed in § 121.406(b).

This proposed rule would not change the general procedures concerning WOSB/EDWOSB protests in relation to contract actions. A concern that has been determined ineligible as part of a status protest could continue to appeal that decision pursuant to newly redesignated § 127.605. However, SBA is proposing to amend newly redesignated § 127.604(f)(4) to clarify that firms found to be ineligible would need to reapply rather than request a reexamination. The proposed language also provides a citation to the appropriate regulation for reapplication procedures.

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

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this proposed rule is a significant regulatory action for the purposes of Executive Order 12866. Accordingly, the next section contains SBA's Regulatory Impact Analysis. This is not a major rule, however, under the Congressional Review Act.

Regulatory Impact Analysis

1. Is there a need for the regulatory action?

The U.S. Small Business Administration (SBA) is required by statute to administer the WOSB Federal Contract Program (WOSB Program). The Small Business Act (Act) sets forth the certification criteria for the WOSB Program. Specifically, the Act states that a WOSB or EDWOSB must, ''be certified by a Federal agency, a State government, the Administrator, or a national certifying entity approved by the SBA Administrator, as a small business concern owned and controlled by women.'' 15 U.S.C. 637(m)(2)(E).

The Federal Acquisition Regulation (FAR) and SBA regulations require that in order to be certified as a WOSB or EDWOSB a small business concern must provide documents supporting its WOSB or EDWOSB status to SBA. See 13 CFR 127.300 and FAR 19.1503(b)(3). The specific documents firms are required to provide are outlined in §§ 127.300(d) and (e). The Act also states that the SBA is authorized to conduct eligibility examinations of any certified WOSB or EDWOSB, and to handle protests and appeals related to such certifications. Id. § 637(m)(5)(A) and (5)(B).

Under the current system firms may be certified by third party certifiers, or they may essentially self-certify and upload the required documents to *sba.certify.gov.* In order to award a WOSB set-aside or sole source contract, the contracting officer must document that the contracting officer reviewed the firm's certifications and documentation. 13 CFR 127.503(g); FAR 19.1503(b)(3). The lack of required certification, coupled with the requirement that the contracting officer must verify that documents have been uploaded, may contribute to reluctance to use the program, resulting in the failure to meet the statutory goal of 5% of all prime contract dollars being awarded to

WOSBs. In FY 2017, the government wide WOSB goal of 5% was not met with actual performance at 4.71% ($20.8B). The government has only met the goal once (FY 2015). While the amount of dollars awarded to WOSBs under the set aside program are trending up, they still account for less than 0.016% of dollars awarded to WOSBs. A certification could help entice agencies to set aside more contracts for WOSBs, so that the government can meet the statutory 5% goal.

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

The benefit of the proposed regulation is a significant improvement in the confidence of contracting officers to make Federal contract awards to eligible firms. Under the existing system, the burden of eligibility compliance is placed upon the awarding contracting officer. Contracting officers must review the documentation of the apparent successful offeror on a WOSB or EDWOSB contract. Under this proposed rule, the burden is placed upon SBA and/or third party certifiers. All that a contracting officer need do is to verify that the firm is fact a certified WOSB or EDWOSB in SAM. A contracting officer would not have to look at any documentation provided by a firm or prepare any internal memorandum memorializing any review. This will encourage more contracting officers to set aside opportunities for WOSB Program participants as the validation process will be controlled by SBA in both SAM and DSBS. Increased procurement awards to WOSB concerns can further close a gap of under-representation of women in industries where in the aggregate WOSB represent 12 percent of all sales in contrast with male-owned businesses that represent 79% of all sales (per SBA Office of Advocacy Issue Brief Number 13, dated May 31, 2017 *https://www.sba.gov/sites/default/files/advocacy/Womens-Business-Ownership-in-the-US.pdf*).

Another benefit of the proposed regulation is to reduce the cost associated with the time required for completing WOSB certification by replacing the WOSB Program Repository with *Certify.SBA.gov* (''Certify'') in the regulation. It is also anticipated that the proposed WOSB certification methodology and likely increased use of WOSB/EDWOSB set asides may increase program participation levels by approximately 32%. Under the prior WOSB Program Repository, SBA determined that the average time required to complete the process required by the WOSB Program Repository was two hours, whereas the use of Certify results requires only one hour. Across an estimated 12,347 firms, the total cost savings is significant, as discussed below. Another potential benefit is the reduction of time and costs to WOSB firms through the reduction of program participation costs. By successfully leveraging technology, SBA has reduced the total cost of burden hours substantially from $2,533,200 to $967,965.

Based on the calculations below, the total estimated number of respondents (WOSBs and EDWOSBs) for this collection of information varies depending upon the types of certification that a business concern is seeking. For initial certification, the total estimated number of respondents is 9,349. The total number was calculated using the two-year average number of business concerns that have provided information through Certify from March 2016 through February 2018. For annual updates, the total number is 12,347. For examinations and protests, the total number is 130.

Type of certification	Number of respondents	Source
Initial certification	9,349	Average annual number of respondents to Certify between March 2016 and February 2018.
New certifications each year	500	Program participation is expected to remain constant after initial year of certification, with 500 new certifications annually.
Annual updates to certification	11,847	Program participation is expected to remain constant after initial year of certification, with a reduction of 500 participants annually through attrition.
Total annual responses	12,347	Annual new certifications plus annual updates.

Each respondent submits one response at the time of initial certification and one at the time of annual update. Estimated burden hours vary depending upon the type of certification that a WOSB or EDWOSB pursues. SBA conducted a survey among a sample of entities that assist WOSBs and EDWOSBs to provide information through Certify. The majority of those surveyed stated that for initial certifications the estimated time for completion is one hour per submission. For annual updates, because of the need to submit little if any additional information, the estimated burden is 0.5 hour per submission. For examinations and protests, the estimated burden is 0.25, which is much lower because firms have already provided the required documents identified in 13 CFR 127.300(d) and (e) through Certify. It is estimated that the initial certification will involve 9,349 existing participants and 2,998 new respondents in the first year. After the first year, initial certifications are expected for 500 new respondents annually with an additional 11,847 annual certifications for existing participants for a total of 12,347 participants in each succeeding year. The participant level is expected to remain stable at 12,347 participants annually with 500 new respondents and 500 attritions from the program annually. Further, 130 respondents are expected to participate in protests and appeals. The respondent's cost of burden hours for a five year period and average is provided in the following table.

COST OF BURDEN HOURS—5 YEAR COST ESTIMATE AND AVERAGE

Year	Initial—existing 1 hr @ $77.58 per participant	Initial—new participants 1 hr @ $77.58 per participant	Annual updates .5 hr @ $77.58 per participant	Examinations and protests .25 hr @ $77.58 per participant	Annual totals
Number of Program Participants					
1	9,349	2,998	.....	130	12,477
2	.....	500	11,847	130	12,477
3	.....	500	11,847	130	12,477
4	.....	500	11,847	130	12,477
5	.....	500	11,847	130	12,477
Costs					
1	$725,295	$232,585	.....	$2,521	$960,402
2	.....	38,790	$459,545	2,521	500,856
3	.....	38,790	459,545	2,521	500,856
4	.....	38,790	459,545	2,521	500,856
5	.....	38,790	459,545	2,521	500,856
5 Year Total:	.....	.....	.....	.....	2,963,828
Annual Cost Avg	.....	.....	.....	.....	592,766

(a) Respondent's Cost of Burden Hours:

Initial certification—transition of existing participants (one time cost):

Estimated officer's salary = $77.58/hour (based on General Schedule 15 Step 10, Washington-Baltimore-Northern Virginia area), which would be equivalent to a senior manager in an average small business firm.)

Total estimated burden: 9,349 × 1 hour × $77.58/hour = $725,295.

Initial certification—new participants (first year cost):

Estimated officer's salary = $77.58/hour (based on General Schedule 15 Step 10, Washington-Baltimore-Northern Virginia area), which would be equivalent to a senior manager in an average small business firm.)

Total estimated burden: 2998 × 1 hour × $77.58/hour = $232,585.

Initial certification—new participants (cost for each succeeding year after initial year):

Estimated officer's salary = $77.58/hour (based on General Schedule 15 Step 10, Washington-Baltimore-Northern Virginia area), which would be equivalent to a senior manager in an average small business firm.)

Total estimated burden: 500 × 1 hour × $77.58/hour = $38,790.

Annual update:

Estimated officer's salary = $77.58/hour (based on General Schedule 15 Step 10, Washington-Baltimore-Northern Virginia area), which would be equivalent to a senior manager in an average small business firm.)

Total estimated burden: 11,847 × .5 hour × $77.58/hour = $459,545.

Examinations and Protests (each year):

Estimated officer's salary = $77.58/hour (based on General Schedule 15 Step 10, Washington-Baltimore-Northern Virginia area), which would be equivalent to a senior manager in an average small business firm.)

Total estimated burden: 130 × .25 hour × $77.58/hour = $2,521.

SBA previously stated that the estimated total respondent's cost of burden hours was $2,533,200 annually. By successfully leveraging technology, SBA has reduced the total cost of burden hours substantially from $2,533,200 to $960,402 for the initial year and $500,856 annually in succeeding years, with respective savings of $1,572,798 in the initial year and annual savings in successive years of $2,032,344 and a five year savings of $9,702,174 for WOSB to redirect as revenue generating resources to close the noted revenue disparity with male-owned businesses.

SBA believes that there are no additional capital or start-up costs or operation and maintenance costs and purchases of services costs to respondents as a result of this rule because there should be no cost in setting up or maintaining systems to collect the required information. As stated previously, the information requested should be collected and retained in the ordinary course of business.

3. What are the alternatives to this proposed rule?

The proposed regulations are required to implement specific statutory provisions which require promulgation of implementing regulations. One alternative considered would be to rely solely on third party certifiers to certify WOSBs and EDWOSBs. However, there is a cost to small businesses for third party certifiers. Firms submit the same documentation to third party certifiers that would submit to SBA, but third party certifiers charge on average $380 annually. Consequently, the cost of relying completely on third party certifiers would be $3,552,620.00 a year (9,349 initial applicants × $380). If third party certifiers were used for the anticipated increase to 12,477 annual participants, the cost would be $4,741,260. In addition, SBA maintains that certification for Federal procurement purposes is an inherently governmental function. Consequently, even if SBA utilized third party certifiers for an initial or preliminary review, SBA or a governmental entity would still have to be involved in reviewing those certifications. In addition, there is an intended benefit of certification. The intent is to increase confidence in the eligibility of firms so that contracting officers and activities utilize the sole source authority. Although trending upwards, WOSB/EDWOSB set aside and sole awards only accounted for 3.4% of total dollars awarded to WOSBs in FY 2017. The Federal Government has met the statutory WOSB goal of 5% of total

dollars awarded to WOSBs only once (FY 2015).

Executive Order 13563

As part of its ongoing efforts to engage stakeholders in the development of its regulations, on December 18, 2015, SBA issued an Advance Notice of Proposed Rulemaking in the **Federal Register,** 80 FR 78984. In response to that notice, SBA received 122 comments. SBA has incorporated those comments and suggestions in the proposed regulation to the extent feasible. In addition, SBA shared the proposed rule with the Small Business Procurement Advisory Council and the Federal Acquisition Regulation small business committee. In addition, the agency met with stakeholders.

Executive Order 12988

For purposes of Executive Order 12988, SBA has drafted this proposed rule, to the extent practicable, in accordance with the standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988, to minimize litigation, eliminate ambiguity, and reduce burden. This rule has no preemptive or retroactive effect.

Executive Order 13132

For the purpose of Executive Order 13132, SBA has determined that this rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various layers of government. Therefore, SBA has determined that this proposed rule has no federalism implications warranting preparation of a federalism assessment.

Executive Order 13771

This proposed rule is expected to be an Executive Order 13771 regulatory action. Details on the estimated costs of this proposed rule can be found in the rule's economic analysis.

Paperwork Reduction Act, 44 U.S.C. Ch. 35

In carrying out its statutory mandate to provide oversight of certification related to SBA's WOSB Federal Contract Program, SBA is currently approved to collect information from the WOSB applicants or participants through SBA Form 2413, and for EDWOSB applicants or participants, through SBA Form 2414. (OMB Control Number 3245–0374). This collection of information also requires submission or retention of documents that support the applicant's certification.

SBA has implemented a certification and information collection platform—Certify—that replicates the currently approved information collection. In other words, the information collected through Certify includes eligibility documents previously collected in the WOSB Repository, and information collected on SBA Form 2413 (WOSB) and SBA Form 2414 (EDWOSB). SBA recently revised this information collection to establish that the agency has discontinued these paper forms and will collect the information and supporting documents electronically through Certify. The recent submission made minor changes to add one question to request information on classes of stock for a corporation and eliminated one question that was redundant.

As currently approved this collection of information is submitted by small business applicants or program participants who self-certify or who obtain certification from an SBA approved third-party certifier. SBA has determined that this proposed rule does not add any additional burden to what is already in place for the current documentation required for self-certification.

As discussed above, this rule proposes to fully implement the statutory requirement for small business concerns to be certified by a Federal agency, a State government, SBA, or a national certifying entity approved by SBA, in order to be awarded a set aside or sole source contract under the WOSB program. As a result of these changes, the rule proposes to eliminate the option to self-certify, set the standards for certification by SBA, and clarify the third-party certification requirements. SBA does not anticipate that these changes would impact the content of the information currently collected; however, it would be necessary to propose changes to the instructions, especially as they relate to self-certification, to make it clear that the option is no longer available. SBA does not believe that any required change to the instructions require the agency to resubmit the information collection to OMB for review and approval.

SBA notes that personal financial information reported on SBA Form 413 (Control Number 3245–0188) will also be submitted electronically through Certify by those applicants seeking SBA certification as an EDWOSB. However, applicants using third-party certifiers will continue to use the paper version of Form 413. This rule does not propose to make any changes to that collection. However, if comments on this proposed rule result in revisions to these WOSB/EDWOSB related collections of information, SBA will seek OMB approval, if necessary, before the rule is finalized.

Regulatory Flexibility Act, 5 U.S.C. 601–612

According to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601, when an agency issues a rulemaking, it must prepare a regulatory flexibility analysis to address the impact of the rule on small entities. However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. The RFA defines ''small entity'' to include ''small businesses,'' ''small organizations,'' and ''small governmental jurisdictions.'' This proposed rule concerns various aspects of SBA's contracting programs. As such, the rule relates to small business concerns, but would not affect ''small organizations'' or ''small governmental jurisdictions.'' SBA's contracting programs generally apply only to ''business concerns'' as defined by SBA regulations, in other words, to small businesses organized for profit. ''Small organizations'' or ''small governmental jurisdictions'' are non-profits or governmental entities and do not generally qualify as ''business concerns'' within the meaning of SBA's regulations.

As stated in the regulatory impact analysis this rule will impact approximately 9,000–12,000 women-owned small businesses. If adopted in final form, these businesses will have to apply to SBA for certification. However, SBA has proposed to minimize the impact on WOSBs by accepting certifications already received from SBA, through DOT's DBE program, or the VA's CVE program, and by providing firms that have been certified by third party certifiers with a one-year grace period for certification. The costs to WOSBs for certification should be de minimis, because the required documentation already exists: Such as articles of incorporation, bylaws, stock ledgers or certificates, tax records, etc. In addition, this information is already required to be provided either to third party certifiers, governmental certifying entities (*e.g.,* DOT DBE, SBA 8(a) Business Development, VA CVE) or to SBA through Certify. Thus, the Administrator certifies that the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

List of Subjects

13 CFR Part 124

Administrative practice and procedure, Government procurement, Minority businesses, Reporting and recordkeeping requirements, Technical assistance.

13 CFR Part 127

Government contracts, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble, SBA proposes to amend 13 CFR parts 124 and 127 as follows:

PART 124—8(a) BUSINESS DEVELOPMENT/SMALL DISADVANTAGED BUSINESS STATUS DETERMINATIONS

■ 1. The authority citation for part 124 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(j), 637(a), 637(d), 644 and Pub. L. 99–661, Pub. L. 100–656, sec.1207, Pub. L. 101–37, Pub. L. 101–574, section 8021, Pub. L. 108–87, and 42 U.S.C. 9815.

■ 2. Amend § 124.104 as follows:
■ a. Remove the first two sentences of paragraph (c)(2) introductory text and add one sentence in their place;
■ b. Remove the first two sentences of paragraph (c)(3)(i) and add one sentence in their place; and
■ c. Revise the first sentence of paragraph (c)(4).

The additions and revision read as follows:

§ 124.104 Who is economically disadvantaged?

* * * * *

(c) * * *

(2) * * * The net worth of an individual claiming disadvantage must be less than $750,000. * * *

(3) * * * (i) SBA will presume that an individual is not economically disadvantaged if his or her adjusted gross income averaged over the three preceding years exceeds $350,000. * * *

(4) * * * An individual will generally not be considered economically disadvantaged if the fair market value of all his or her assets (including his or her primary residence and the value of the applicant/Participant firm) exceeds $6 million. * * *

PART 127—WOMEN-OWNED SMALL BUSINESS FEDERAL CONTRACT PROGRAM

■ 3. The authority citation for part 127 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 637(m), 644 and 657r.

■ 4. Revise subpart C to read as follows:

Subpart C—Certification of EDWOSB or WOSB Status

Certification by SBA

Certification by Third Party

Subpart C—Certification of WOSB or EDWOSB Status

Certification by SBA

§ 127.300 How is a concern certified as an WOSB or EDWOSB?

(a) *WOSB certification.* (1) A concern may apply to SBA for WOSB certification. There is no cost to apply to SBA for certification. SBA will consider the information provided by the concern in order to determine whether the concern qualifies. SBA, in its discretion, may rely solely upon the information submitted to establish eligibility, may request additional information, or may verify the information before making a determination. SBA may draw an adverse inference and deny the certification where the concern fails to cooperate with SBA or submit information requested by SBA.

(2) A concern may submit evidence to SBA that it is a women-owned concern that is a certified 8(a) Participant, certified by the Department of Veterans Affairs (VA) CVE as a Service-Disabled Veteran Owned Business or Veteran-Owned Business, or certified as a Disadvantaged Business Enterprise (DBE) by a state agency authorized by the Department of Transportation (DOT); or

(3) A concern may submit evidence that it has been certified as a WOSB by an approved Third Party Certifier in accordance with this subpart.

(b) *EDWOSB certification.* (1) A concern may apply to SBA for EDWOSB certification. There is no cost to apply to SBA for certification. SBA will consider the information provided by the concern in order to determine whether the concern qualifies. SBA, in its discretion, may rely solely upon the information submitted to establish eligibility, may request additional information, or may verify the information before making a determination. SBA may draw an adverse inference and deny the certification where the concern fails to cooperate with SBA or submit information requested by SBA.

(2) A women-owned business that is a certified 8(a) Participant qualifies as an EDWOSB;

(3) Firms certified by the VA or under DOT's DBE program as women-owned business concerns will be deemed to be owned and controlled by women, but must apply to SBA to demonstrate their economic disadvantage in order to be certified as EDWOSBs; or

(4) A concern may submit evidence that it has been certified as an EDWOSB by a third party certifier under this subpart.

(c) *SBA notification and designation.* If SBA determines that the concern is a qualified WOSB or EDWOSB, it will issue a letter of certification and designate the firm as a certified WOSB or EDWOSB on the Dynamic Small Business Search (DSBS) system, or successor system.

§ 127.301 When may a concern apply to SBA for certification?

A concern may apply for WOSB or EDWOSB certification and submit the required information whenever it can represent that it meets the eligibility requirements, subject to the restrictions of § 127.306. All representations and supporting information contained in the application must be complete and accurate as of the date of submission. The application must be signed by an officer of the concern who is authorized to represent the concern.

§ 127.302 Where can a concern apply for certification from SBA?

A concern seeking certification as a WOSB or EDWOSB may apply to SBA

for certification via *https://certify.sba.gov* or any successor system. Certification pages must be validated electronically or signed by a person authorized to represent the concern.

§ 127.303 What must a concern submit to SBA?

(a) To be certified by SBA as a WOSB or EDWOSB, a concern must provide documents and information demonstrating that it meets the requirements set forth in part 127 subpart B. SBA maintains a list of the minimum required documents that can be found at *https://certify.sba.gov.* A firm may submit additional documents and information to support its eligibility. The required documents must be provided to SBA during the application process electronically. This may include, but is not limited to, corporate records, business and personal financial records, including copies of signed Federal personal and business tax returns, and individual and business bank statements.

(b) In addition to the minimum required documents, SBA may request additional information from applicants in order to verify eligibility.

(c) After submitting the application, an applicant must notify SBA of any changes that could affect its eligibility.

(d) If a concern was decertified or previously denied certification, it must include with its application for certification a full explanation of why it was decertified or denied certification, and what, if any, changes have been made. If SBA is not satisfied with the explanation provided, SBA may decline to certify the concern.

(e) If the concern was decertified for failure to notify SBA of a material change affecting its eligibility pursuant to § 127.401, it must include with its application for certification a full explanation of why it failed to notify SBA of the material change. If SBA is not satisfied with the explanation provided, SBA may decline to certify the concern.

§ 127.304 How will SBA process the application for certification?

(a) The SBA's Director of Government Contracting (D/GC) or designee is authorized to approve or decline applications for certification. SBA must receive all required information and supporting documents before it will begin processing a concern's application. SBA will not process incomplete applications. SBA will advise each applicant within 15 calendar days after the receipt of an application whether the application is complete and suitable for evaluation and, if not, what additional information or clarification is required to complete the application. SBA will make its determination within ninety (90) calendar days after receipt of a complete package, whenever practicable.

(b) SBA may request additional information or clarification of information contained in an application or document submission at any time.

(c) The burden of proof to demonstrate eligibility is on the applicant concern. If a concern does not provide requested information within the allotted time provided by SBA, or if it submits incomplete information, SBA may presume that disclosure of the missing information would adversely affect the business concern's eligibility or demonstrate a lack of eligibility in the area or areas to which the information relates.

(d) The applicant must be eligible as of the date it submitted its application and up until the time the D/GC issues a decision. The decision will be based on the facts contained in the application, any information received in response to SBA's request for clarification, and any changed circumstances since the date of application.

(e) Any changed circumstances occurring after an applicant has submitted an application will be considered and may constitute grounds for decline. After submitting the application and signed representation, an applicant must notify SBA of any changes that could affect its eligibility. The D/GC may propose decertification for any EDWOSB or WOSB that fails to inform SBA of any changed circumstances that affected its eligibility for the program during the processing of the application.

(f) If SBA approves the application, SBA will send a written notice to the concern and update *https://certify.sba.gov* or any successor system, and update DSBS and the System for Award Management (or any successor systems) to indicate the firm has been certified by SBA.

(g) A decision to deny eligibility must be in writing and state the specific reasons for denial.

(h) A copy of the decision letter will be sent to the electronic mail address provided with the application. SBA will consider any decision sent to this electronic mail address provided to have been received by the applicant firm.

(i) The decision of SBA to decline certification is the final Agency decision, unless the applicant seeks reconsideration pursuant to § 127.305.

§ 127.305 Can an applicant ask SBA to reconsider SBA's initial decision to decline its application?

(a) A concern whose application is declined may request that SBA reconsider its decision by filing a request for reconsideration at *https://certify.sba.gov,* or any successor system, within 30 calendar days of the date of SBA's decision.

(b) At the time of its request for reconsideration, the applicant must provide any additional information and documentation pertinent to overcoming the reason(s) for the initial decline, whether or not available at the time of initial application, including information and documentation regarding changed circumstances.

(c) SBA will issue a written decision within 60 calendar days of SBA's receipt of the applicant's request for reconsideration. SBA may approve the application, deny it on the same grounds as the original decision, or deny it on other grounds. If denied, the D/GC will explain why the applicant is not eligible for admission to the EDWOSB or WOSB program and give specific reasons for the decline.

(d) If SBA declines the application solely on issues not raised in the initial decline, the applicant can ask for reconsideration as if it were an initial decline.

(e) The decision of SBA to decline certification is the final Agency decision.

§ 127.306 May declined or decertified concerns seek recertification at a later date?

A concern that SBA has declined or decertified may seek certification after one year from the date of decline or decertification if it believes that it has overcome all of the reasons for decline or decertification and is currently eligible. A concern found to be ineligible during a WOSB/EDWOSB status protest is precluded from applying for certification for one year from the date of the final agency decision (the D/GC's decision if no appeal is filed or the decision of SBA's Office of Hearings and Appeals (OHA) where an appeal is filed pursuant to § 127.605.

Certification by Third Party

§ 127. 350 What is a third party certifier?

A third party certifier is a non-governmental entity that SBA may approve to certify that an applicant firm is qualified for the WOSB or EDWOSB contracting program. A third party certifier may be a for-profit or non-profit entity. The list of SBA-approved third

party certifiers may be found on SBA's website at *sba.gov*.

§ 127.351 What third party certifications may a concern use as evidence of its status as a qualified EDWOSB or WOSB?

In order for SBA to accept a third party certification that a concern qualifies as a WOSB or EDWOSB, the concern must have a current, valid certification from an entity designated as an SBA-approved certifier. The third party certification must be submitted to SBA through *https://certify.sba.gov* (or a successor system).

§ 127.352 What is the process for becoming a third party certifier?

SBA will periodically hold open solicitations. All entities that believe they meet the criteria to act as a third party certifier will be free to respond to the solicitation. SBA will review the submissions, and if SBA determines that an entity has demonstrated it meets SBA criteria, SBA will enter into an agreement and designate the entity as an approved third party certifier.

§ 127.353 May third party certifiers charge a fee?

(a) Third party certifiers may charge a reasonable fee, but must notify applicants first, in writing, that SBA offers certification for free.

(b) The method of notification and the language that will be used for this notification must be approved by SBA. The third party certifier may not change its method or the language without SBA approval.

§ 127.354 What are the minimum required certification standards for a third party certifier?

(a) All third party certifiers must enter into written agreements with SBA. This agreement will detail the requirements that the third party certifier must meet. SBA may terminate the agreement if SBA subsequently determines that the entity's certification process does not comply with SBA-approved certification standards or is not based on the same program eligibility requirements as set forth in subpart B of this part or conducts itself in a manner contrary to SBA's values.

(b) Third party certifiers' certification process must comply with SBA-approved certification standards and track the WOSB or EDWOSB eligibility requirements set forth in subpart B of this part.

(c) In order for SBA to enter into an agreement with a third party certifier, the entity must establish the following:

(1) It will render fair and impartial WOSB/EDWOSB Federal Contract Program eligibility determinations;

(2) It will provide the approved applicant a valid certificate for entering into the SBA electronic platform, and will retain documents used to determine eligibility for a period of six (6) years to support SBA's responsibility to conduct a status protest, eligibility examination, agency investigation or audit of the third party determinations;

(3) Its certification process will require applicant concerns to register in SAM (or any successor system) and submit sufficient information as determined by SBA to enable it to determine whether the concern qualifies as a WOSB. This information must include documentation demonstrating whether the concern is:

(i) A small business concern under the SBA size standard corresponding to the concern's primary industry, as defined in 13 CFR 121.107;

(ii) At least 51 percent owned and controlled by one or more women who are United States citizens; and

(4) It will not decline to accept a concern's application for WOSB/EDWOSB certification on the basis of race, color, national origin, religion, age, disability, sexual orientation, marital or family status, or political affiliation.

§ 127.355 How will SBA ensure that approved third party certifiers are meeting the requirements?

(a) SBA will require third party certifiers to submit quarterly reports to SBA. These reports will contain information including the number of applications received, number of applications approved and denied, and other information that SBA determines may be helpful for ensuring that third party certifiers are meeting their obligations or information or data that may be useful for improving the program.

(b) SBA will conduct periodic compliance reviews of third party certifiers to ensure that they are properly applying SBA's WOSB/EDWOSB requirements and certifying firms in accordance with those requirements.

(1) SBA will conduct a compliance review on at least one third party certifier per year and will ensure that every third party certifier undergoes a full compliance review every three years.

(2) At the conclusion of each compliance review SBA will provide the third party certifier with a written report detailing SBA's findings with regard to the third party certifier's compliance with SBA's requirements. The report will include recommendations for possible improvements, and detailed explanations for any deficiencies identified by SBA.

(c) If SBA determines that a third party certifier is not meeting the requirements, SBA may revoke the approval of that third party certifier.

§ 127.356 How does a concern obtain certification from an approved certifier?

(a) A concern that seeks WOSB or EDWOSB certification from an SBA-approved third party certifier must submit its application directly to the approved certifier in accordance with the specific application procedures of the particular certifier.

(b) The concern must register in the System for Award Management (SAM), or any successor system.

(c) The approved certifier must ensure that all documents used to determine that a firm is approved for certification are uploaded in *https://certify.sba.gov* or any successor system.

§ 127.357 What happens if a firm is found not eligible by a third party certifier?

(a) The concern may request, at no additional cost to the applicant, a redetermination within 30 calendar days from the third party certifier that initially declined its application and cannot represent itself as a qualified WOSB or EDWOSB unless and until it receives a determination of eligibility.

(b) The third party certifier must complete the redetermination within 60 calendar days of request. If the applicant is declined, the third party certifier shall notify SBA.

(c) The concern must wait one year to request a reexamination from either SBA or a third party certifier.

(d) The concern may not seek certification from any other third party certifier during this waiting period.

■ 5. Revise subpart D to read as follows:

Subpart D—Maintaining WOSB and EDWOSB Status and Eligibility Examinations

Sec.

Subpart D—Maintaining WOSB and EDWOSB Status and Eligibility Examinations

§ 127.400 How does a concern maintain its WOSB or EDWOSB certification?

(a) A certified WOSB or EDWOSB must recertify every three years to SBA that it continues to meet all of the WOSB and EDWOSB eligibility requirements. Concerns wishing to remain in the program without any interruption must recertify their continued eligibility to SBA within 30 calendar days before the third anniversary date of their initial certification and each subsequent three-year period. Failure to do so will result in the concern being decertified. The process for completing the recertification can be found on SBA's website at *https://certify.sba.gov* (or successor system).

(b) A concern certified by a third party certifier prior to the effective date of SBA's certification may maintain that status for three years from the date of its certification or most recent recertification by the third party certifier.

§ 127.401 What are an EDWOSB's and WOSB's ongoing obligations to SBA?

Once certified, a WOSB or EDWOSB must immediately notify SBA of any material changes that could affect its eligibility. Material change includes, but is not limited to, a change in the ownership, business structure, or management. The notification must be in writing, and must be uploaded into the firm's profile with SBA. The method for notifying SBA can be found on *https://certify.sba.gov.* A concern's failure to notify SBA of such a material change may result in decertification and removal from SAM and DSBS (or any successor system) as a designated certified WOSB/EDWOSB concern. In addition, SBA may seek the imposition of penalties under § 127.700.

§ 127.402 What happens if a concern fails to recertify?

If a WOSB or EDWOSB fails to recertify its status on *https://certify.sba.gov* (or successor system) pursuant to § 127.400 or SBA determines that a concern has not notified SBA of a change that could affect its WOSB or EDWOSB eligibility, SBA will decertify the concern from the program. In the case of a concern failing to recertify its status as a WOSB or EDWOSB, SBA will decertify the firm from the program on the day after the third anniversary date of initial certification or recertification. SBA will issue a written notice explaining why the concern has been decertified. This decertification will be SBA's final decision and may not be appealed.

§ 127.403 What is a program examination, who will conduct it, and what will SBA examine?

(a) A program examination is an investigation by SBA officials, which verifies the accuracy of any certification of a concern issued by a third party certifier or other Federal or State agency or in connection with a WOSB or EDWOSB contract. Thus, examiners may verify that the concern currently meets the program's eligibility requirements, and that it met such requirements at the time of its application for certification, its most recent recertification, or its certification in connection with a WOSB or EDWOSB contract.

(b) Examiners may review any information related to the concern's eligibility requirements. SBA may also conduct site visits.

(c) It is the responsibility of program participants to ensure the information provided to SBA is kept up to date and is accurate. SBA considers all required information and documents material to a concern's eligibility, and assumes that all information and documentation submitted are up to date and accurate unless SBA has information that indicates otherwise.

§ 127.404 When may SBA conduct program examinations?

SBA may conduct a program examination at any time after a concern has been certified as a WOSB or EDWOSB.

§ 127.405 May SBA require additional information from a WOSB or EDWOSB during a program examination?

At the discretion of the D/GC, SBA has the right to require that a WOSB or EDWOSB submit additional information as part of the certification process, or at any time thereafter. SBA may draw an adverse inference from the failure of a concern to cooperate with a program examination or provide requested information.

§ 127.406 What happens if SBA determines that the concern is no longer eligible for the program?

If SBA believes that a concern does not meet the program eligibility requirements, the concern has not provided or maintained all the required certifications and documentation, or the concern has failed to notify SBA of a material change, SBA will propose the concern for decertification from the program.

(a) *Proposed Decertification.* The D/GC or designee will notify the concern in writing that it has been proposed for decertification. This notice will state the reasons why SBA has proposed decertification, and that the WOSB or EDWOSB must respond to each of the reasons set forth.

(1) The WOSB or EDWOSB must respond in writing to a proposed decertification within 20 calendar days from the date of the proposed decertification.

(2) If the initial certification was done by a third party, SBA will also notify the third party certifier of the proposed decertification in writing.

(b) *Decertification.* The D/GC or designee will consider the reasons for proposed decertification and the concern's response before making a written decision whether to decertify. The D/GC may draw an adverse inference where a concern fails to cooperate with SBA or provide the information requested. The D/GC's decision is the final Agency decision.

(c) *Reapplication.* A concern decertified pursuant to this section may reapply to the program pursuant to § 127.306.

§ 127.505 [Removed and reserved]

■ 6. Remove and reserve § 127.505.

§ 127.602 [Amended]

■ 7. Amend § 127.602 by removing the last sentence.

§ 127.603 [Amended]

■ 8. Amend § 127.603 by removing the second to last sentence in paragraph (d).

■ 9. Revise § 127.604(f)(4) to read as follows:

§ 127.604 How will SBA process an EDWOSB or WOSB status protest?

* * * * *

(f) * * *

(4) A concern that has been found to be ineligible will be decertified from the program and may not submit an offer as a WOSB or EDWOSB on another procurement until it is recertified. A concern may be recertified by reapplying to the program pursuant to § 127.306.

Christopher M. Pilkerton,

Acting Administrator.

[FR Doc. 2019–09684 Filed 5–13–19; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0322; Product Identifier 2019–NM–039–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc., Model DHC–8–400 series airplanes. This proposed AD was prompted by reports of cracked elevator power control unit (PCU) brackets on the horizontal stabilizer rear spar and cracking on the elevator front spar. This proposed AD would require one-time inspections for cracks and damage of the elevator PCU brackets and surrounding area, horizontal stabilizer rear spar, and elevator front spar, and related investigative and corrective actions if necessary. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by June 28, 2019.

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 *http://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 Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* internet *http://www.bombardier.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0322; 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 (phone: 800–647–5527) is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Andrea Jimenez, Aerospace Engineer, Airframe and Mechanical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7330; fax 516–794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite 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–2019–0322; Product Identifier 2019–NM–039–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2018–34, dated December 17, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc., Model DHC–8–400 series airplanes. The MCAI states:

> There have been five in-service reports of cracked elevator power control unit (PCU) brackets on the horizontal stabilizer rear spar, and two reports of cracking on the elevator front spar. In one case, the PCU bracket cracking led to detachment of the bracket during pushback. An investigation found that the force-fight loads induced by elevator PCUs not rigged to the required tolerance is the common factor in cracking of both the elevator PCU bracket and of the elevator front spar. A secondary contributor to the elevator PCU bracket cracking is the bracket flange preload that may be induced during production installation. Failure of an elevator PCU bracket or progression of the elevator front spar cracking into two segments may cause the affected elevator to jam. Failure of an elevator bracket on both elevators, or progression of elevator front spar cracking into two segments on both elevators, could cause a loss of aeroplane pitch control.
>
> This [Canadian] AD mandates a one-time inspection of the elevator PCU brackets, the horizontal stabilizer rear spar and elevator front spar with reporting of inspection findings. Any brackets found cracked are to be replaced with new brackets with improved strength. For any spar found cracked, obtain instructions to repair the spar from Bombardier and repair the spar accordingly. Additional corrective action may be considered depending on the results of the inspections findings.

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0322.

Related Service Information Under 1 CFR Part 51

Bombardier has issued Service Bulletin 84–55–09, dated June 7, 2018. This service information describes procedures for one-time detailed visual and fluorescent penetrant inspections for cracks and damage of the elevator PCU brackets (including the surrounding area), horizontal stabilizer rear spar, and elevator front spar, and related investigative and corrective actions if necessary. The related investigative action is an eddy current inspection for cracking of certain mating holes of the horizontal stabilizer rear spar. Corrective actions include replacement of the elevator PCU brackets and repair of the horizontal stabilizer rear spar and elevator front spar.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop

on other products of the same type design.

Proposed Requirements of This NPRM

This proposed AD would require accomplishing the actions specified in the service information described previously. This proposed AD also would require sending the inspection results to Bombardier.

Costs of Compliance

We estimate that this proposed AD affects 54 airplanes of U.S. registry. We estimate 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
13 work-hours × $85 per hour = $1,105	$0	$1,105	$59,670

* Table does not include estimated costs for reporting.

We estimate that it would take about 1 work-hour per product to comply with the proposed reporting requirement in this proposed AD. The average labor rate is $85 per hour. Based on these figures, we estimate the cost of reporting the inspection results on U.S. operators to be $4,590, or $85 per product.

We estimate the following costs to do any necessary on-condition actions that would be required based on the results of any required actions. We have no way of determining the number of aircraft that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
18 work-hours × $85 per hour = $1,530	$0	$1,530

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this NPRM is 2120–0056. The paperwork cost associated with this NPRM has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this NPRM is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW, Washington, DC 20591, ATTN: Information Collection Clearance Officer, AES–200.

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.

We are 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

We 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. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. 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):

Bombardier, Inc.: Docket No. FAA–2019–0322; Product Identifier 2019–NM–039–AD.

(a) Comments Due Date

We must receive comments by June 28, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc., Model DHC–8–400, –401, and –402 airplanes, certificated in any category, serial numbers 4001 through 4580 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight controls.

(e) Reason

This AD was prompted by reports of cracked elevator power control unit (PCU) brackets on the horizontal stabilizer rear spar and cracking on the elevator front spar. We are issuing this AD to address this condition, which, if not detected and corrected, may cause failure of an elevator PCU bracket or fracture the front spar into two segments; either structural failure may cause a jam in one elevator or a loss of airplane pitch control if both elevators are affected.

(f) Compliance

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

(g) Inspections

No earlier than 7,500 total accumulated flight hours, but before accumulating 8,000 flight hours after the effective date of this AD: Perform detailed visual and fluorescent penetrant inspections for cracks and damage of the elevator PCU brackets, horizontal stabilizer rear spar, and elevator front spar, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–55–09, dated June 7, 2018.

(1) If any crack is detected on any elevator PCU bracket, and no crack or damage is found on either spar: Before further flight, replace the elevator PCU bracket with a new bracket, and do all related investigative and corrective actions, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–55–09, dated June 7, 2018.

(2) If any crack or damage is detected on any horizontal stabilizer rear spar or elevator front spar: Before further flight, repair using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(h) Reporting

At the applicable time specified in paragraph (h)(1) or (h)(2) of this AD: Report the results of the inspections required by paragraph (g) of this AD to the Bombardier CMDB Focal by fax 1–416–375–4538 or email at *cmdb.requests@aero.bombardier.com,* in accordance with the instructions of Bombardier Service Bulletin 84–55–09, dated June 7, 2018. If operators have reported findings as part of obtaining any corrective actions approved by Bombardier, Inc.'s TCCA DAO, operators are not required to report those findings as specified in this paragraph.

(1) If the inspections were done on or after the effective date of this AD: Submit the report within 30 days after the inspections.

(2) If the inspections were done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. 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 corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO. If approved by the DAO, the approval must include the DAO-authorized signature.

(3) *Reporting Requirements:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 1 hour per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW, Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2018–34, dated December 17, 2018, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0322.

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

(3) For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* internet *http://www.bombardier.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on May 2, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–09807 Filed 5–13–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0324; Product Identifier 2019–NM–031–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Fokker Services B.V. Model F28 Mark 0070 and 0100 airplanes. This proposed AD was prompted by reports of cracks on certain nose landing gear (NLG) turning tubes resulting from incorrectly applied repairs. This proposed AD would require removing the affected parts and replacing them with serviceable parts. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by June 28, 2019.

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 *http://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 Fokker service information identified in this NPRM, contact Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88–6280–350; fax +31 (0)88–6280–111; email *technicalservices@fokker.com;* internet *http://www.myfokkerfleet.com.* For Safran service information identified in this NPRM, contact Safran Landing Systems, One Carbon Way, Walton, KY 41094; telephone (859) 525–8583; fax (859) 485–8827; internet *https://www.safran-landing-systems.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0324; 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 (phone: 800–647–5527) is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite 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–2019–0324; Product Identifier 2019–NM–031–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0037, dated February 19, 2019 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Fokker Services B.V. Model F28 Mark 0070 and 0100 airplanes. The MCAI states:

> Occurrences have been reported of finding cracks on certain NLG turning tubes. The subsequent investigation results revealed that the cracks initiated from an area that is sensitive to fatigue cracking, which had been subject to incorrectly applied repairs.
>
> This condition, if not detected and corrected, could lead to NLG turning tube failure, possibly resulting in damage to the aeroplane and injury to occupants.
>
> To address this potential unsafe condition, Fokker Services published the SB [service bulletin] to provide replacement instructions, referring to SLS [Safran Landing Systems] SB F100–32–117 for in-shop inspection.
>
> For the reasons described above, this [EASA] AD requires removal from service of the affected part and replacement with a serviceable part.

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0324.

Related Service Information Under 1 CFR Part 51

Fokker Services B.V. has issued Fokker Service Bulletin SBF100–32–171, dated November 27, 2018. This service information describes procedures for removing and replacing affected NLG turning tubes.

Safran has issued Service Bulletin F100–32–117, dated July 30, 2018. This service information describes procedures for a magnetic particle or eddy current inspection of NLG turning tubes.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Proposed Requirements of This NPRM

This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD affects 4 airplanes of U.S. registry. We estimate 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
9 work-hours × $85 per hour = $765	$1,282	$2,047	$8,188

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.

We are 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

We 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. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. 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):

Fokker Services B.V.: Docket No. FAA–2019–0324; Product Identifier 2019–NM–031–AD.

(a) Comments Due Date

We must receive comments by June 28, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Fokker Services B.V. Model F28 Mark 0070 and 0100 airplanes, certificated in any category, all manufacturer serial numbers.

(d) Subject

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

(e) Reason

This AD was prompted by reports of cracks on certain nose landing gear (NLG) turning tubes resulting from incorrectly applied repairs. We are issuing this AD to address cracking of NLG turning tubes, which could lead to NLG turning tube failure, possibly resulting in damage to the airplane and injury to occupants.

(f) Compliance

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

(g) Definitions

(1) An affected part is an NLG turning tube assembly having part number (P/N) 201456200, 201071202, 201071240, or 201071241; installed on an NLG unit having a P/N identified in Safran Service Bulletin F100–32–117, dated July 30, 2018.

(2) A serviceable part is an affected part that is new or that, before installation, has passed an inspection (no cracks found, having the correct radius) in accordance with the Accomplishment Instructions of Safran Service Bulletin F100–32–117, dated July 30, 2018.

(h) Replacement

Within 22,000 flight cycles after the effective date of this AD: Replace the affected parts, with serviceable parts, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–32–171, dated November 27, 2018.

(i) Parts Installation Limitation

As of the effective date of this AD, no person may install, on any airplane, an affected part, unless it is a serviceable part.

(j) No Reporting Requirement

Although Safran Service Bulletin F100–32–117, dated July 30, 2018, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(k) 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 (l)(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 corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or the European Aviation Safety Agency (EASA); or Fokker Services B.V.'s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2019–0037, dated February 19, 2019, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0324.

(2) For more information about this AD, contact Tom Rodriguez, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3226.

(3) For Fokker service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 1357, 2130 EL Hoofddorp, the Netherlands; telephone +31 (0)88–6280–350; fax +31 (0)88–6280–111; email *technicalservices@fokker.com;* internet *http://www.myfokkerfleet.com.* For Safran service information identified in this AD, contact Safran Landing Systems, One Carbon Way, Walton, KY 41094; telephone (859) 525–8583; fax (859) 485–8827; internet *https://www.safran-landing-systems.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on May 3, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–09644 Filed 5–13–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0186; Product Identifier 2018–NM–153–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Bombardier, Inc., Model CL–600–2B16 (601–3A, 601–3R, and 604 Variants) airplanes. This proposed AD was prompted by a report that main landing gear (MLG) side stay actuators have been assembled using nonconforming split ball bearings. This proposed AD would require verification of the serial numbers of the installed MLG side stay actuator assemblies, and replacement of the affected parts. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by June 28, 2019.

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 *http://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 Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; fax 514–855–7401; email *ac.yul@aero.bombardier.com;* internet *http://www.bombardier.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0186; 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 (phone: 800–647–5527) is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Darren Gassetto, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7323; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite 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–2019–0186; Product Identifier 2018–NM–153–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2018–26, dated October 5, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc., Model CL–600–2B16 (601–3A, 601–3R, and 604 Variants) airplanes. The MCAI states:

> The landing gear supplier has informed Bombardier Inc. about a quality escape involving Main Landing Gear (MLG) side stay actuators that have been assembled using non-conforming split ball bearings. The affected bearings are manufactured from material that does not meet the required material properties. If not corrected, this condition can result in potentially asymmetric MLG gear extension or retraction and subsequent gear collapse during landing.
>
> This [Canadian] AD mandates verification of the installed MLG side stay actuator assemblies and replacement of the affected parts.

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0186.

Related Service Information Under 1 CFR Part 51

Bombardier has issued the following service information.

- Bombardier Service Bulletin 604–32–029, Revision 02, dated May 10, 2018.
- Bombardier Service Bulletin 605–32–006, Revision 02, dated May 10, 2018.
- Bombardier Service Bulletin 650–32–002, Revision 02, dated May 10, 2018.

The service information describes procedures to verify the serial numbers of the installed MLG side stay actuator assemblies and to replace the affected parts. These documents are distinct since they apply to the airplane model in different configurations.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Proposed Requirements of This NPRM

This proposed AD would require accomplishing the actions specified in the service information described previously.

Differences Between This Proposed AD and the MCAI or Service Information

The applicability of the MCAI is limited to Bombardier, Inc., Model CL–600–2B16 (601–3A, 601–3R, and 604 Variants) airplanes, serial numbers 5301 through 5665 inclusive, 5701 through

5988 inclusive, and 6050 through 6091 inclusive, equipped with MLG side stay actuator assembly containing split ball bearing part number 104467672. However, the applicability of this proposed AD includes all Bombardier, Inc., Model CL–600–2B16 (601–3A, 601–3R, and 604 Variants) airplanes and prohibits the installation of any MLG side stay actuator with a serial number identified in the service information. Because the affected part is a rotable part, we have determined that this part could later be installed on airplanes that were initially delivered with the acceptable part, thereby subjecting those airplanes to the unsafe condition. We have coordinated this difference with TCCA.

Costs of Compliance

We estimate that this proposed AD affects 384 airplanes of U.S. registry. We estimate 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
1 work-hour × $85 per hour = $85	$0	$85	$32,640

We estimate the following costs to do any necessary on-condition action that would be required based on the results of any required actions. We have no way of determining the number of aircraft that might need this on-condition action:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
Up to 7 work-hours × $85 per hour = $595	Up to $1,820 ..	Up to $2,415.

According to the manufacturer, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all known costs in our cost estimate.

Authority for This Rulemaking

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

We are 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

We 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. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. 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):

Bombardier, Inc.: Docket No. FAA–2019–0186; Product Identifier 2018–NM–153–AD.

(a) Comments Due Date

We must receive comments by June 28, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Bombardier, Inc., Model CL–600–2B16 (601–3A, 601–3R, and 604 Variants) airplanes, certificated in any category.

(d) Subject

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

(e) Reason

This AD was prompted by a report that main landing gear (MLG) side stay actuators have been assembled using nonconforming

split ball bearings. We are issuing this AD to address the affected bearings, which could potentially result in asymmetric MLG gear extension or retraction, and subsequent gear collapse during landing.

(f) Compliance

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

(g) Inspection to Verify the Serial Number

For airplane serial numbers 5301 through 5665 inclusive, 5701 through 5988 inclusive, and 6050 through 6091 inclusive, equipped with any MLG side stay actuator assembly containing split ball bearing part number (P/N) 104467672: For the left and right MLG side stay actuator assemblies having P/Ns 19011–103 and 19011–105, at the applicable time specified in figure 2 to paragraph (g) of this AD, perform an inspection to verify the serial number, in accordance with paragraphs 2.A. and 2.B. of the Accomplishment Instructions of the applicable service information specified in figure 1 to paragraph (g) of this AD.

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Figure 1 to paragraph (g) of this AD – *Service information for verifying serial number*

Model	Airplane S/N	Service Information
CL-600-2B16 (601-3A, 601-3R, and 604 Variants) airplanes	5301 through 5665 inclusive	Bombardier Service Bulletin 604-32-029, Revision 02, dated May 10, 2018
	5701 through 5988 inclusive	Bombardier Service Bulletin 605-32-006, Revision 02, dated May 10, 2018
	6050 through 6091 inclusive	Bombardier Service Bulletin 650-32-002, Revision 02, dated May 10, 2018

Figure 2 to paragraph (g) of this AD – *Compliance times*

Total Flight Cycles	Compliance Time
As of the effective date of this AD: 3,350 total flight cycles or fewer on an MLG side stay actuator assembly	Before the MLG side stay actuator assembly reaches 3,750 total flight cycles or 48 months from the effective date of this AD, whichever occurs first.
As of the effective date of this AD: more than 3,350 total flight cycles on an MLG side stay actuator assembly	Within 400 flight cycles or 12 months from the effective date of this AD, whichever occurs first.

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(h) Replacement

If, during the inspection specified in paragraph (g) of this AD, the identified serial number of the MLG side stay actuator assembly is listed in table 1 or table 2 of paragraph 2.B. of the Accomplishment Instructions of the applicable service information specified in figure 1 to paragraph (g) of this AD: At the applicable time specified in figure 2 to paragraph (g) of this AD, replace the split ball bearing having P/N 104467672, in accordance with paragraph 2.C. of the Accomplishment Instructions of the applicable service information specified in figure 1 to paragraph (g) of this AD. If the identified serial number of the MLG side stay actuator assembly is not listed in table 1 or table 2 of paragraph 2.B. of the Accomplishment Instructions of the applicable service information specified in figure 1 to paragraph (g) of this AD, no further action is required by this paragraph.

(i) Parts Installation Limitation

As of the effective date of this AD, no person may install, on any Bombardier, Inc., Model CL–600–2B16 (601–3A, 601–3R, and 604 Variants) airplanes, an MLG side stay actuator assembly with a serial number listed in table 1 or table 2 of paragraph 2.B. of the Accomplishment Instructions of the applicable service information specified in figure 1 to paragraph (g) of this AD, unless the split ball bearing having P/N 104467672 has been previously replaced as specified in paragraph (h) of this AD.

(j) Credit for Previous Actions

This paragraph provides credit for actions required by paragraphs (g) of this AD, if those actions were performed before the effective date of this AD using the service information in paragraphs (j)(1) through (j)(3) of this AD.

(1) Bombardier Service Bulletin 604–32–029, Revision 01, dated February 5, 2018.

(2) Bombardier Service Bulletin 605–32–006, Revision 01, dated February 5, 2018.

(3) Bombardier Service Bulletin 650–32–002, Revision 01, dated February 5, 2018.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the

procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. 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 corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s. TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2018–26, dated October 5, 2018, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0186.

(2) For more information about this AD, contact Darren Gassetto, Aerospace Engineer, Mechanical Systems and Administrative Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7323; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; fax 514–855–7401; email *ac.yul@aero.bombardier.com;* internet *http://www.bombardier.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on May 3, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–09643 Filed 5–13–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0256; Product Identifier 2019–NM–027–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Bombardier, Inc., Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes; Model CL–600–2C10 (Regional Jet Series 700, 701 & 702) airplanes; Model CL–600–2D15 (Regional Jet Series 705) airplanes; Model CL–600–2D24 (Regional Jet Series 900) airplanes; and Model CL–600–2E25 (Regional Jet Series 1000) airplanes. This proposed AD was prompted by a report that during Automatic Flight Control System (AFCS) ALTS CAP or (V) ALTS CAP mode the flight guidance/autopilot does not account for engine failure while capturing an altitude. This proposed AD would require revising the airplane flight manual (AFM) to include a limitation and abnormal operating procedure for the AFCS. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by June 28, 2019.

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 *http://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 Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; fax 514–855–7401; email *ac.yul@aero.bombardier.com;* internet *http://www.bombardier.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0256; 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 (phone: 800–647–5527) is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Steven Dzierzynski, Aerospace Engineer, Avionics and Electrical Systems Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7367; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite 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–2019–0256; Product Identifier 2019–NM–027–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2018–32, dated December 10, 2018 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Bombardier, Inc., Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes; Model CL–

600–2C10 (Regional Jet Series 700, 701 & 702) airplanes; Model CL–600–2D15 (Regional Jet Series 705) airplanes; Model CL–600–2D24 (Regional Jet Series 900) airplanes; and Model CL–600–2E25 (Regional Jet Series 1000) airplanes. The MCAI states:

> It was determined that during ALTS CAP or (V) ALTS CAP mode, the flight guidance/autopilot does not account for engine failure while capturing an altitude. If an engine failure occurs during or before a climb while in ALTS CAP or (V) ALTS CAP mode, the airspeed may drop significantly below the safe operating speed. Prompt crew intervention may be required to maintain a safe operating speed.
>
> This [Canadian] AD mandates the introduction of a Limitation and Abnormal procedure to the [airplane flight manual] AFM to address the above mentioned unsafe condition.

You may examine the MCAI in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0256.

Related Service Information Under 1 CFR Part 51

Bombardier has issued the following service information, which describes procedures for revising the AFM by including a warning for the AFCS and procedures if an engine failure occurs during or before a climb while in ALTS CAP mode or if an engine failure occurs during or before a climb while in (V) ALTS CAP mode. These documents are distinct since they apply to different airplane models.

- Subject 2—AFCS, of Section 02–08, ''System Limitations,'' of Chapter 2, ''LIMITATIONS,'' and Subject C, ''Engine Failure in Climb During ALTS CAP,'' of Section 05–02, ''In-flight Engine Failures,'' of Chapter 5, ''ABNORMAL PROCEDURES,'' of the Bombardier CRJ Regional Jet AFM, CSP A–012, Revision 70, dated July 13, 2018.
- Subject 2—AFCS, of Section 02–08, ''System Limitations,'' of Chapter 2, ''LIMITATIONS,'' and Subject C, ''Engine Failure in Climb During ALTS CAP'' and ''Engine Failure in Climb During (V) ALTS CAP,'' of Section 05–02, ''In-flight Engine Failures,'' of Chapter 5, ''ABNORMAL PROCEDURES,'' of the Bombardier CRJ Regional Jet AFM CSP B–012, Revision 24, dated May 11, 2018.
- Subject 2—AFCS, of Section 02–08, ''System Limitations,'' of Chapter 2, ''LIMITATIONS,'' and Subject C, ''Engine Failure in Climb During ALTS CAP'' and ''Engine Failure in Climb During (V) ALTS CAP,'' of Section 05–02, ''In-flight Engine Failures,'' of Chapter 5, ''ABNORMAL PROCEDURES,'' of the Bombardier CRJ Regional Jet AFM CSP C–012, Revision 19A, dated August 17, 2018.
- Subject 2—AFCS, of Section 02–08, ''System Limitations,'' of Chapter 2, ''LIMITATIONS,'' and Subject C, ''Engine Failure in Climb During ALTS CAP'' and ''Engine Failure in Climb During (V) ALTS CAP,'' of Section 05–02, ''In-flight Engine Failures,'' of Chapter 5, ''ABNORMAL PROCEDURES,'' of the Bombardier CRJ Regional Jet AFM CSP D–012, Revision 20, dated September 28, 2018.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Proposed Requirements of This NPRM

This proposed AD would require revising the AFM by including a warning for the AFCS and procedures if an engine failure occurs during or before a climb while in ALTS CAP mode and if an engine failure occurs during or before a climb while in (V) ALTS CAP mode.

Costs of Compliance

We estimate that this proposed AD affects 985 airplanes of U.S. registry. We estimate 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
1 work-hour × $85 per hour = $85	$0	$85	$83,725

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.

We are 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

We 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. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. 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):

Bombardier, Inc.: Docket No. FAA–2019–0256; Product Identifier 2019–NM–027–AD.

(a) Comments Due Date

We must receive comments by June 28, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Bombardier, Inc. airplanes identified in paragraphs (c)(1) through (c)(5) of this AD, certificated in any category, all manufacturer serial numbers.

(1) Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes.

(2) Model CL–600–2C10 (Regional Jet Series 700, 701 & 702) airplanes.

(3) Model CL–600–2D15 (Regional Jet Series 705) airplanes.

(4) Model CL–600–2D24 (Regional Jet Series 900) airplanes.

(5) Model CL–600–2E25 (Regional Jet Series 1000) airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 22, Auto flight.

(e) Reason

This AD was prompted by a report that during Automatic Flight Control System (AFCS) ALTS CAP or (V) ALTS CAP mode the flight guidance/autopilot does not account for engine failure while capturing an altitude. We are issuing this AD to address an engine failure that occurs during or before a climb while in ALTS CAP or (V) ALTS CAP mode, which may cause the airspeed to drop significantly below the safe operating speed, possibly resulting in reduced control of the airplane.

(f) Compliance

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

(g) Revision of the Airplane Flight Manual (AFM)

Within 30 days after the effective date of this AD: Revise the AFM to include the information in Subject 2, ''Automatic Flight Control System (AFCS),'' of Section 02–08, ''System Limitations,'' of Chapter 2, ''LIMITATIONS,'' and Subject C, ''Engine Failure in Climb During ALTS CAP,'' or ''Engine Failure in Climb During (V) ALTS CAP,'' of Section 05–02, ''In-flight Engine Failures,'' of Chapter 5, ''ABNORMAL PROCEDURES,'' as applicable, of the applicable AFM identified in figure 1 to paragraph (g) of this AD.

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Figure 1 to paragraph (g) of this AD – *AFM Revision*

Bombardier Airplane Model	AFM Number	AFM Revision
CL-600-2B19	CSP A-012	AFM Revision 70, dated July 13, 2018.
CL-600-2C10	CSP B-012	AFM Revision 24, dated May 11, 2018.
CL-600-2D15 CL-600-2D24	CSP C-012	AFM Revision 19A, dated August 17, 2018.
CL-600-2E25	CSP D-012	AFM Revision 20, dated September 28, 2018.

(h) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using the applicable AFM specified in figure 2 to paragraph (h) of this AD.

Figure 2 to paragraph (h) of this AD – *Credit for Previous AFM Revision*

Bombardier Airplane Model	AFM Number	AFM Revision
CL-600-2B19	CSP A-012	AFM Revision 68, dated August 04, 2017; or AFM Revision 69, dated January 05, 2018.
CL-600-2C10	CSP B-012	AFM Revision 22, dated September 15, 2017; or AFM Revision 22A, dated January 03, 2018; or AFM Revision 23, dated March 02, 2018; or AFM revision 23A, dated April 30, 2018.
CL-600-2D15 CL-600-2D24	CSP C-012	AFM Revision 17, dated October 13, 2017; or AFM Revision 17A, dated November 15, 2017; or AFM Revision 17B, dated January 03, 2018; or AFM Revision 18, dated March 29, 2018; or AFM Revision 18A, dated April 30, 2018; or AFM Revision 19, dated June 15, 2018.
CL-600-2E25	CSP D-012	AFM Revision 17, dated June 16, 2017; or AFM Revision 18, dated November 10, 2017; or AFM Revision 18A, dated January 03, 2018; or AFM Revision 19, dated April 27, 2018.

BILLING CODE 4910–13–C

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. 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 corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2018–32, dated December 10, 2018, for related information. This MCAI may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0256.

(2) For more information about this AD, contact Steven Dzierzynski, Aerospace Engineer, Avionics and Electrical Systems Services Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7367; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov*.

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; Widebody Customer Response Center North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; fax 514–855–7401; email *ac.yul@aero.bombardier.com;* internet *http://www.bombardier.com*. You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on April 25, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–09806 Filed 5–13–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0323; Product Identifier 2019–NM–026–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 737–800 series airplanes. This proposed AD was

prompted by reports of inadequate clearance between a certain fuel quantity indicating system (FQIS) tank unit and a certain reinforcement angle upon accomplishment of a certain modification. This proposed AD would require a detailed inspection to measure the clearance between the FQIS tank unit and a certain reinforcement angle, and repair if necessary. We are proposing this AD to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by June 28, 2019.

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 *http://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 Aviation Partners Boeing, 2811 S 102nd Street, Suite 200, Seattle, WA 98168; telephone 206–830–7699; internet *https://www.aviationpartnersboeing.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0323; 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 (phone: 800–647–5527) is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Christopher Baker, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3552; email: *christopher.r.baker@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite 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–2019–0323; Product Identifier 2019–NM–026–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. We will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

Discussion

We have received reports of inadequate clearance between an FQIS tank unit at rib 21 and the stringer U–14 reinforcement angle upon accomplishment of the split scimitar winglet modification of supplemental type certificate (STC) ST00830SE. Following alterations or maintenance in this area, the FQIS tank unit and the stringer U–14 reinforcement angle must maintain a minimum 0.10-inch clearance, as specified in Aviation Partners Boeing (APB) Service Bulletin AP737–57–020, dated April 5, 2018. A Boeing design change led to interference between the FQIS tank unit and the winglet structure upon installation of STC ST00830SE. STC ST00830SE, combined with the Boeing FQIS bracket configuration on certain airplanes, leads to inadequate clearance or interference between the structure and the FQIS tank unit in the outboard area of the wing tanks. APB notified Boeing of the nonconformance when APB was unable to meet the clearance requirements upon installation of the STC ST00830SE on two separate modifications. Such inadequate clearance, if not addressed, could result in a potential source of ignition in a fuel tank, consequent fire, overpressure, and structural failure of the wing.

An ignition in the fuel tank could result from either of two scenarios. In one scenario, if the lightning protection shield over the out-of-tank FQIS wiring has a degraded or missing connection to the structure, excessive current can be induced in the FQIS wiring during a lightning strike, resulting in high voltage between the fuel probe and the structure. This high voltage from lightning-induced current, combined with inadequate clearance of the probe from the structure, could result in arcs and sparks in the fuel tank. A degraded or missing lightning protection shield connection to the structure is identified as a latent failure.

In the second scenario, electrical sparks could occur if there is a hot short between power wiring and out-of-tank FQIS wiring, when combined with surface coatings that are worn as a result of a probe that has been in contact with the structure. A probe in contact with the structure would likely remain latent for a significant period of time with worn coatings before actual metal-to-metal contact was made, at which time the FQIS indication for that tank would blank, eventually resulting in the need for troubleshooting.

Related Service Information Under 1 CFR Part 51

We reviewed Aviation Partners Boeing Service Bulletin AP737–57–020, dated April 5, 2018. This service information describes procedures for a detailed inspection to measure the clearance between the FQIS tank unit and stringer U–14 reinforcement angle at rib 21 (WSTA 617) on the left-hand wing, and repair including trimming the stringer U–14 reinforcement angle to obtain minimum clearance. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

We are proposing this AD because we 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 the service information described previously.

Costs of Compliance

We estimate that this proposed AD affects 16 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Detailed Inspection	7 work-hours × $85 per hour = $595	$0	$595	$9,520

We estimate the following costs to do any necessary repair that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need this repair:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repair	4 work-hours × $85 per hour = $340	$0	$340

According to the manufacturer, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all known costs in our cost estimate.

Authority for This Rulemaking

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

We are 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

We 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) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

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

(4) 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):

The Boeing Company: Docket No. FAA–2019–0323; Product Identifier 2019–NM–026–AD.

(a) Comments Due Date

We must receive comments by June 28, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 737–800 series airplanes, certificated in any category, line numbers 4919 through 5063 inclusive, modified by supplemental type certificate (STC) ST00830SE.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Unsafe Condition

This AD was prompted by reports of inadequate clearance between a certain fuel quantity indicating system (FQIS) tank unit and a certain reinforcement angle upon accomplishment of a certain modification. We are issuing this AD to address this condition, which could result in a potential source of ignition in a fuel tank and consequent fire, overpressure, and structural failure of the wing and possible loss of the airplane.

(f) Compliance

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

(g) Inspection and Repair

Within 18 months after the effective date of this AD: Perform a detailed inspection to determine the clearance between the FQIS tank unit at rib 21 (WSTA 617) and stringer U–14 reinforcement angle in accordance with the Accomplishment Instructions of Aviation Partners Boeing Service Bulletin AP737–57–020, dated April 5, 2018. If the measured clearance is less than 0.10-inch: Before further flight, perform the repair action in accordance with the Accomplishment Instructions of Aviation Partners Boeing Service Bulletin AP737–57–020, dated April 5, 2018.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (i)(1) of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@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.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(i) Related Information

(1) For more information about this AD, contact Christopher Baker, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3552; email: *christopher.r.baker@faa.gov.*

(2) For service information identified in this AD, contact Aviation Partners Boeing, 2811 S 102nd Street, Suite 200, Seattle, WA 98168; telephone 206–830–7699; internet *https://www.aviationpartnersboeing.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued in Des Moines, Washington, on May 3, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–09866 Filed 5–13–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 960

[Docket No.: 100903432–9396–01]

RIN 0648–BA15

Licensing of Private Remote Sensing Space Systems

AGENCY: National Environmental Satellite, Data, and Information Service (NESDIS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (Commerce).

ACTION: Proposed rule.

SUMMARY: The Department of Commerce (Commerce), through the National Oceanic and Atmospheric Administration (NOAA), licenses the operation of private remote sensing space systems under the Land Remote Sensing Policy Act of 1992. NOAA's existing regulations implementing the Act were last updated in 2006. Commerce is now proposing to rewrite those regulations, as described in detail below, to reflect significant changes in the space-based remote sensing industry since that time and to improve the regulatory approach overall. Commerce requests public comment on the new proposed regulations.

DATES: Comments must be received by July 15, 2019.

ADDRESSES: You may send comments by the following methods:

Federal eRulemaking Portal: Go to: *www.regulations.gov* and search for the docket number NOAA–NESDIS–2018–0058. Click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

Mail: NOAA Commercial Remote Sensing Regulatory Affairs, 1335 East-West Highway, G101, Silver Spring, Maryland 20910.

Instructions: The Department of Commerce and NOAA are not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. All submissions received must include the agency name and docket number or RIN for this rulemaking. All comments received will be posted without change to *www.regulations.gov,* including any personal or commercially proprietary information provided.

FOR FURTHER INFORMATION CONTACT: Tahara Dawkins, Commercial Remote Sensing Regulatory Affairs, at 301–713–3385, or Glenn Tallia, NOAA Office of General Counsel, at 301–628–1622.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to Article VI of the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (Outer Space Treaty), activities of private U.S. entities in outer space require the ''authorization and continuing supervision'' of the United States Government. The Land Remote Sensing Policy Act of 1992, codified at 51 U.S.C. 60101 *et seq.* (Act), authorizes the Secretary of Commerce (Secretary) to fulfill this responsibility for operators of private remote sensing space systems, by authorizing the Secretary to issue and enforce licenses for the operation of such systems. The Secretary's authority under the Act is currently delegated to the NOAA Assistant Administrator for Satellite and Information Services. Under its regulations implementing the Act, found at 15 CFR part 960, NOAA has issued licenses for over 1,000 imaging satellites, helping to ensure that the United States remains the clear world leader in this industry.

Through the National Space Council, an interagency organization established by the President of the United States, chaired by the Vice President, and tasked with developing and monitoring the implementation of national space policy and strategy, this Administration has made clear that long-term U.S. interests are best served by ensuring that U.S. industry continues to lead the rapidly maturing and highly competitive private remote sensing space market. The Administration's goal is to advance and protect U.S. national security and foreign policy interests by maintaining the nation's leadership in remote sensing space activities, and by sustaining and enhancing the private U.S. remote sensing space industry. In short, the Administration aims to ensure that the United States remains the world leader in this strategic industry.

To that end, and in accordance with Space Policy Directive-2, Commerce began the process of reviewing its private remote sensing space system regulations by publishing an Advance Notice of Proposed Rulemaking (ANPRM) on June 29, 2018 (83 FR 30592). The ANPRM sought public comment on a variety of questions across five topics related to the Act, and Commerce received nine detailed responses. Commerce thanks all commenters for their thoughtful responses to its ANPRM. Commerce incorporated many principles and specific ideas from these comments into this proposed rule.

Based on the wide scope of this undertaking and substantive changes desired by the Administration and suggested by the public, Commerce is proposing to entirely rewrite the current regulations. Commerce started from a blank slate, then incorporated public input from the ANPRM and the results of several months' worth of interagency discussions. As described in detail below, this proposed rule implements the Administration's and the public's shared goals of increasing transparency, certainty, and reducing regulatory

burdens without impairing essential governmental interests, such as preserving U.S. national security and adhering to international obligations. The most fundamental changes Commerce proposes to meet these goals are, first, to create a two-category framework, where the license terms are commensurate with the risk posed by the remote sensing space system to the national security and international obligations of the United States, and, second, to conduct a full interagency review and consider custom license conditions only when a proposed system is novel and is in the higher risk category. Commerce believes this approach will be more efficient, more transparent, and less burdensome, and will provide more certainty to the remote sensing community, compared with the status quo.

Commerce invites public comment and requests suggestions for additional improvements to the rule in general. Of particular note, Commerce seeks feedback on the proposed rule's criteria used to distinguish between low- and high-risk systems, and the standard license conditions proposed for low- and high-risk systems, respectively (including cost of complying with such conditions and suggested alternative approaches).

General Overview

Comments received in response to the ANPRM favored a less burdensome regulatory approach; categorizing systems and conditioning their operations proportionately, based on the risks they pose to U.S. national security and international obligations; and increasing transparency in the regulatory process, such as through notice-and-comment rulemaking. The proposed rule makes several changes based on specific concepts supported by the public comments to the ANPRM, including the following:

- Updates and clarifies the definition of ''remote sensing,'' with the result that many cameras used today in space for technical purposes will not require a license;
- Establishes a review process and license conditions based on potential risk, separating ''high-risk'' systems from ''low-risk'' systems, with the result that, based on a review of past applications, approximately 40 percent of future systems would likely be considered ''low-risk'';
- Incorporates only those conditions specified in the rule in all licenses except for proposed systems that are novel and pose a high risk, estimated, based on a review of past applications, at under 20 percent of systems, thereby eliminating the uncertainty, additional review time, and regulatory burden imposed by individualized interagency review for all non-novel applications;
- Requires the periodic update of the low-risk category criteria, standard license conditions, and interagency review processes via public notice-and-comment rulemaking, thereby increasing transparency and regulatory certainty;
- Reduces the application review time to 60 days for low-risk systems and 90 days for high-risk systems, and eliminates the current practice of ''clock stoppages'' for review of applications; and
- Reduces compliance burdens in several ways, such as:
  - Reducing the number and complexity of license conditions, including eliminating the requirement to offer unenhanced data to the U.S. Government before deleting (purging) data;
  - Significantly lessens paperwork burdens by reducing the information requested in the application and replacing audits with certifications; and
  - Incorporating all operating requirements into a single license document.

Subpart-by-Subpart Overview

Subpart A: General

This subpart addresses the scope and applicability of the proposed rule, Commerce's jurisdiction, and definitions.

First, the scope of the Act and, therefore, the proposed rule, do not include systems owned or operated by U.S. Government agencies. The rule, therefore, has no bearing on U.S. Government remote sensing capabilities or the data policy regarding the availability of data or products therefrom, such as Landsat and NOAA's operational satellites. The proposed rule regulates private remote sensing space systems operated by all other entities, which may be commercial, non-profit, academic, or otherwise. If such entities are United States citizens, as defined in the proposed rule, or foreign entities that would operate a private remote sensing space system from the United States, they would fall within the Secretary's jurisdiction and require a license.

Second, the proposed rule's definition of ''remote sensing space system'' includes missions to conduct remote sensing from an orbit of any celestial body. When the current regulations were last updated, Commerce did not foresee that private entities would pursue remote sensing missions beyond Earth's orbit; therefore, the current regulations limit their jurisdiction to systems in Earth orbit and those capable of sensing the Earth. However, as discussed below, the Act is not limited to Earth-focused missions. This revised definition better reflects the Act's scope and provides clarity for operators of remote sensing missions not in Earth orbit that were previously unable to identify a U.S. Government agency that was able to clearly and directly authorize their proposed mission. Commerce seeks public comment on this statutory interpretation.

Commerce received several comments questioning the statutory authority and policy rationale for regulating non-Earth imaging, especially where the operator has no intent to image the Earth. Commerce believes that the plain language of the Act requires a broader scope than simply intentional Earth imaging. In the Act (at 51 U.S.C. 60101(4)), Congress defined ''land remote sensing'' as the collection of imagery of the Earth's surface. However, when Congress created the authority for Commerce to issue licenses, it did not limit this authority to ''land'' remote sensing. Instead, it provided Commerce with a broader authority over all ''private remote sensing space systems.'' 51 U.S.C. 60121(a)(1). The Act's legislative history reveals this to have been an intentional wording choice. By avoiding the word ''land,'' which Congress used elsewhere in the Act, Congress made clear that Commerce's responsibility to regulate remote sensing was not limited to intentional Earth imaging.

Third, Commerce calls attention to the proposed rule's definition of ''remote sensing.'' As drafted, the definition requires ''transmission'' of data that is collected in space, so instruments that collect data in space but never transmit the data (for example, traditional star trackers) would not meet the definition of ''remote sensing'' and would not need a license. However, Commerce cannot exempt systems with poor imaging resolution from the licensing requirement, as at least one commenter requested. The Act requires all operators of remote sensing space systems to obtain a license before operating, and the Act does not provide the authority for Commerce to exempt any system that performs ''remote sensing'' from the license requirement.

The definition of ''remote sensing'' also addresses a point raised by several commenters, who requested that Commerce either exempt cameras on launch vehicles from the licensing requirement, or create a special streamlined licensing category for them.

In the proposed rule, the definition of ''remote sensing'' excludes data from an instrument that is physically attached to the primary object being sensed, because this sensing is not ''remote.'' This updated definition has the result of excluding many cameras used today in space for technical purposes, including cameras attached to second-stage launch vehicles, where the camera primarily images the launch vehicle itself; and cameras primarily viewing a solar array deploying on a spacecraft. Therefore, any cameras falling under the exclusion in the revised definition would not need a license.

Fourth, the ANPRM asked how Commerce should decide which entity or entities must obtain a license if many entities are involved in a single system. All commenters that responded on this point requested that Commerce license only the one entity with the greatest control over the remote sensing operations of the system. Commerce agrees with this suggestion, and has implemented it by clarifying the definition of ''operate.'' Therefore, under the proposed rule, a single entity will be legally responsible for ensuring the compliance of the entire system. Commerce notes that the system, as defined, includes all space- and ground-based components that support remote sensing and data management, regardless of whether the licensee owns or manages it. For example, if Company A owns and controls a remote sensing instrument that is physically hosted on Company B's spacecraft, it is likely that Company A is the correct party to apply for a license, and would be responsible for ensuring compliance with all license terms, even if they affect or rely on activities conducted by Company B.

Finally, some commenters suggested Commerce create a form of a general license for identical or similar systems. Commerce notes that the definition of ''remote sensing space system'' in the proposed rule makes clear that a license may authorize a system comprising one or more remote sensing instruments and spacecraft. By not limiting how many remote sensing instruments qualify as a system, the proposed rule permits an applicant to apply for a single license to operate a series or constellation of remote sensing instruments. So long as the characteristics and capabilities of the entire system are fully and accurately described in the application, a system comprising multiple instruments could potentially receive a single license.

Subpart B: Risk Categories and General Interagency Consultation Processes

This subpart addresses how Commerce will periodically consult with the other U.S. Government agencies with roles specified in the Act: The Departments of Defense and State. It also reflects one of the major changes in the proposed rule: The distinction between low- and high-risk systems. In the ANPRM, Commerce suggested the possibility of identifying applications posing a ''de minimis'' risk. All commenters reacted positively to this idea. After deliberation, Commerce opted to attempt to expand this category by including systems deemed to be low-risk, rather than the more conservative ''de minimis'' risk. Commerce hoped this would allow far more applicants into this streamlined and less burdensome category, which will receive the license conditions specified in Subpart D, rather than the more expansive conditions in Subpart E. Similarly, a few commenters suggested implementing a system akin to a ''general license'' or notification-based authorization to operate a ''de minimis'' risk system. The proposed rule, instead, streamlines the individual application and licensing processes for low-risk systems, which Commerce believes will benefit far more operators and will achieve the same policy goals as the commenters' proposals.

Regarding the risk category criteria, Commerce sought to draft the categorization criteria to ensure that a substantial portion of licensees would be subject to the low-risk conditions. Under the criteria in the proposed rule, Commerce estimates that approximately 40 percent of existing licensees (primarily educational institutions) would have been categorized as low-risk.

Generally, systems that meet all criteria in this subpart will be categorized as low-risk, although the Secretary may categorize as low-risk some systems that meet less than all of the low-risk criteria after consultation with the Secretaries of Defense and State. Additionally, the Secretary may categorize as high-risk a system that meets all the low-risk criteria, but which poses a high and unforeseeable risk because it is novel in some way. Publishing the categorization criteria in the rule provides potential applicants with greater insight into what category they are likely to be assigned—and, therefore, what processes and license conditions they may be subject to.

Commerce seeks public comment on the criteria in section 960.6. Commerce requests feedback about whether these criteria (as they interact with the corresponding standard license conditions in Subparts D and E) appropriately take into account the Administration's goals, including the policy factors in 960.5. Commerce also specifically seeks comment on whether the terms used in the criteria factors reflect the remote sensing industry's own technical parameters, such that the criteria can be clearly understood. For example, the criteria include whether a system is capable of imaging a center point more than once in 24 hours; Commerce welcomes comments on whether the remote sensing industry has a different, commonly used method to calculate revisit rate. Additionally, Commerce seeks comment on the thresholds adopted in the criteria. For example, with respect to resolution thresholds, the Administration opted to use the capabilities of the public Landsat system as a floor for the systems that would be deemed low-risk; that is to say, a system is necessarily low-risk if it is no more capable than Landsat. As a result, the thresholds for imaging resolution for low-risk systems are set at 15 meters panchromatic and 30 meters multispectral, respectively. Commerce seeks comment on these and other thresholds.

Commenters variously suggested updating these criteria every one to five years, depending on whether the commenters emphasized the need for adaptability or certainty. To balance these interests, Commerce proposes to review the criteria at least every two years. If Commerce believes changes are warranted, it will promulgate updates to the criteria through notice-and-comment rulemaking to ensure it is transparent and informed.

Subpart B also provides a process for reviewing and updating standard license conditions at least every two years. This process mirrors the one discussed above for updating categorization criteria, and will likewise promote transparency, certainty, public input, and adaptability.

Additionally, in all places in the proposed rule that include interagency consultation, the U.S. Government would be required to use the dispute resolution procedures in the 2017 Interagency Memorandum of Understanding (MOU). However, the definition of the MOU in the proposed rule makes clear that wherever the MOU (which implemented the existing regulations) conflicts with the proposed rule, the proposed rule will govern. Of particular note, Section IV(A) of the MOU conflicts in large part with the proposed rule's interagency consultation process for the review of

applications and inclusion of license conditions described in subparts C, D, and E of the proposed rule; therefore, subparts C, D, and E of the proposed rule will govern. Furthermore, Section IV(B) refers to interagency dispute resolution for licensing actions, but the proposed rule uses the committees created in Section IV(B)(1) and escalation procedures in Section IV(B)(2) for resolving disputes about matters besides individual licensing actions. Therefore, when the proposed rule refers to ''interagency dispute resolution procedures in Section IV(B) of the MOU,'' the U.S. Government will treat the text of Section IV(B) as though it referred to adjudicating any disputes. Commerce anticipates that the MOU will help ensure that the procedures in the proposed rule work smoothly and quickly.

Subpart C: License Application Submission and Categorization

This subpart informs applicants of the review procedures that Commerce will follow in accepting and beginning review of all applications, including the process by which Commerce will categorize an application as low- or high-risk based on the criteria specified in Subpart B. It provides timelines for internal government procedures and for notifying applicants of their category.

One of the primary benefits to industry from the proposed rule is in curtailing the interagency application review process. Under the existing regulations, every applicant receives the same interagency review, with the potential for specialized license conditions of which the applicant had no prior notice. This interagency review process has sometimes resulted in prolonged delays to license issuance, and has imposed license conditions that the applicant could not have anticipated when developing their system.

Under the proposed rule, Commerce expects that the majority of applications would not be subjected to that individualized interagency review. Whether they are categorized as low- or high-risk, most applications would be subject only to a determination of whether the application is complete, its appropriate category, and whether the applicant will comply with the law. Only those applications that are novel (such that the standard license conditions do not adequately address their risks) will be subjected to open-ended interagency review and the possibility of specialized license conditions. Based on a review of four years of applications, Commerce estimates that over 80 percent of such applications would not have received individualized review or specialized license conditions under the proposed rule. In summary, the proposed rule provides significantly expedited review and greater certainty for the majority of applications, whether categorized as low- or high-risk.

Subpart D: Low-Risk Category

This subpart exclusively addresses low-risk applications and licenses. It contains procedures for completing review of applications categorized as low-risk and for granting or denying those licenses. It also contains every condition that will be included in each low-risk license, and clarifies which conditions may be waived and how.

A key innovation of the proposed rule, requested by several commenters, is that applicants that are informed that their systems will be categorized as low-risk will know with certainty what their license conditions will be: Applications categorized as low-risk are never subject to individual interagency review, can never include specific conditions, and Commerce cannot require a modification once a license is granted (colloquially, if imprecisely, known as permanent ''retroactive conditions''). Moreover, these standard license conditions are less burdensome than those typically included in licenses under the existing regulations. For example, low-risk licensees will not be required to encrypt data in transmission or at rest, nor must they be able to comply with limited operations orders (colloquially known as temporary ''shutter control'').

The standard license conditions, for both low- and high-risk categories, are split into two subsections: Those that are eligible to be waived and those that are not. The rule specifies that Commerce will consider waiving a condition for good cause, including when the condition is inapplicable, or when the licensee can achieve the condition's goal another way. Most conditions that are not eligible to be waived are specifically required either by the Act or by Section 1064, Public Law 104–201, (the 1997 Defense Authorization Act), referred to as the ''Kyl-Bingaman Amendment.''

One notable condition relates to data protection. Commerce's current regulations do not specify a clear data protection standard, instead requiring all licensees to develop, submit, obtain approval of, and follow, a ''data protection plan.'' The proposed rule provides greater certainty to applicants as to what data protection measures will be sufficient, while still retaining flexibility where appropriate. Regarding encryption, the standard license conditions in the proposed rule require low-risk licensees to choose a National Institute of Standards and Technology (NIST)-approved encryption method to encrypt telemetry, tracking, and control (TT&C) only (see discussion of high-risk data protection conditions below in the Subpart E summary). The rule requires the licensee to implement additional measures, consistent with industry best practice, to prevent unauthorized system access. However, the ''data protection plan'' is no longer required.

Therefore, applicants will know in advance what encryption methods will be acceptable, and will not be required to develop or receive approval of a data protection plan. However, as with all waivable conditions, the applicant may request a waiver and propose an alternative means of protection. Commerce believes this strikes an appropriate balance between providing certainty and allowing flexibility. Commerce seeks feedback on this approach to data protection, and on the proposed requirement to implement NIST-approved encryption.

Turning to Commerce's duty to implement the Kyl-Bingaman Amendment, the NPRM proposes a standard license condition consistent with the Kyl-Bingaman Amendment's prohibition against issuing a license that permits imagery of Israel that is ''more detailed or precise than . . . is available from commercial sources.'' Commerce, interpreting this language, reasoned that imagery is ''available from commercial sources'' when imagery at a certain resolution is ''readily and consistently available in sufficient quantities from non-U.S. sources'' to render more stringent resolution restrictions on U.S. licensees ineffective (April 25, 2006, 71 FR 24473). Commerce modeled this interpretation on export control regulations issued by Commerce's Bureau of Industry and Security, which address an analogous concern. Applying this standard, Commerce has most recently found that imagery of Israel is readily and consistently available at a two-meter resolution (October 15, 2018, 83 FR 51929). Commerce proposes to reevaluate the resolution determination every two years as a part of the routine review of standard license conditions described in Subpart B. Commerce seeks comment on the interpretation of the statute at 71 FR 24479, and on whether the spatial resolution Commerce identifies in the relevant standard conditions below is consistent with that interpretation (April 25, 2006, 71 FR 24473).

All commenters favored a presumption of approval for all applications. Commerce agrees. This

subpart implements a presumption of approval for low-risk applications, meaning that Commerce must grant the license application unless the Secretary has specific, credible evidence that the applicant will not comply with applicable legal requirements. This subpart also halves the time the Act allows for Commerce to review a low-risk application from 120 days to 60 days, as requested by a few commenters, and reduces the review period for a high-risk application to 90 days.

For all licensees, the proposed rule dramatically decreases paperwork and compliance burdens. The existing regulatory program requires the completion of lengthy baseline, quarterly, and annual audits, and pre-launch documentation, among other requirements. By contrast, the proposed rule replaces such requirements for low-risk systems with a single annual certification, as requested by several commenters. This certification merely requires the licensee to verify that all facts contained in the license are still true.

The ANPRM requested comments about whether Commerce should impose any insurance requirements to address potential liability to the United States Government, and to mitigate the risk of orbital debris. All commenters that responded on this point argued against imposing such a requirement. In lieu of imposing insurance requirements, Commerce is proposing a standard license condition (shown in Subparts D and E) requiring licensees to comply with the latest version of the Orbital Debris Mitigation Standard Practices (ODMSP) issued by the U.S. Government, as contemplated by Space Policy Directive-3, section 6(b)(ii). Commerce anticipates that this requirement will reduce the risk of on-orbit collisions and preserve the space environment for all users, while imposing minimal additional burdens on industry.

Commenters also requested greater clarity about license amendments and foreign agreements. Whereas the existing regulatory approach to these topics can require duplicative paperwork and review processes, such as requesting review of a proposed foreign agreement and license amendment for the same transaction, the proposed rule greatly simplifies the license amendment process and combines it with the foreign agreement process. It replaces both of these with a single ''modification,'' required only when a material fact listed in the license changes. For example, if the license specifies that there are no foreign ground stations, then a licensee would need to obtain approval of a modification before adding a foreign ground station. Commerce would review the terms of the foreign agreement as part of its analysis about whether to grant the modification request, but the licensee would not need to obtain separate approval of the foreign agreement.

Subpart E: High-Risk Category

This subpart exclusively addresses high-risk applications and licenses. It contains procedures for completing review of applications categorized as high-risk and for granting or denying those licenses. Many of these processes are identical to or comparable to those included in Subpart D for low-risk applications and licenses, but the proposed rule separates them to assist applicants and licensees in understanding what terms apply to them.

There are two types of conditions contemplated in high-risk licenses: Standard conditions (which are included in all licenses and published in the rule), and specific conditions, which are generated on a case-by-case basis, if necessary (because the system is determined to be novel, as described in Subpart C), through consultation with other U.S. Government agencies. In the course of such interagency consultation, the rule commits Commerce to determine, in consultation with the Secretaries of Defense and State, whether proposed specific license conditions may be reasonably mitigated by U.S. Government action, and to follow the MOU escalation procedures in the event of any disagreements. It also enables Commerce to involve the applicant during the licensing process and consult regarding any proposed specific conditions, suggested by some commenters as a way to find creative, less-burdensome conditions that still address interagency concerns. These procedures are intended to create procedural safeguards against unduly burdensome conditions.

One important standard high-risk condition addresses data protection. As discussed previously, the existing regulations do not specify data protection criteria, instead requiring the licensee to develop, submit, obtain approval of, and then follow a data protection plan. By contrast, the proposed rule specifies data protection criteria to increase clarity: The standard license conditions in the proposed rule require high-risk licensees to choose a NIST-approved and validated encryption method with a key length of at least 256 bits for encrypting TT&C and all data transmissions, and to implement additional measures, consistent with industry best practice, to prevent unauthorized system access.

Recognizing the increased risk posed by the data from high-risk systems, the proposed rule requires that high-risk licensees also maintain a document that describes the means by which the licensee will comply with the license's data protection conditions. The proposed rule would require high-risk licensees to use the latest version of NIST's Cybersecurity Framework in developing this document; Commerce seeks comment on this proposal and whether any alternatives are preferable. The licensee is not required to submit the document to Commerce, although Commerce may request it and may use it to assist in inspections.

High-risk applications, like low-risk applications described above, also benefit from the presumption of approval favored by all commenters. This means that Commerce generally must grant these licenses within the 90-day review timeline unless there is specific, credible evidence that the applicant will not comply with applicable legal requirements. The proposed rule eliminates ''clock stoppages'' and thereby increases transparency about the timeline.

As is true for low-risk licenses, the proposed rule combines ''license amendments'' and ''foreign agreements'' into a single ''license modification'' process, which is the same for high-risk licenses as for low-risk licenses as described above in the overview of Subpart D.

Unlike for low-risk licenses, the proposed rule permits Commerce to require license modifications after license issuance to high-risk systems that could require technical modifications to the system for national security reasons as determined by the Secretary of Defense. However, the proposed rule includes the Act's procedure which provides that Commerce may require the U.S. Government to reimburse affected licensees for additional costs associated with such technical modifications.

Finally, the proposed rule dramatically reduces paperwork for high-risk licenses. Almost all compliance documents, such as routine audits, are replaced by a semi-annual certification.

Subpart F: Prohibitions and Enforcement

This subpart reduces the number of possible violations compared with the existing regulations. It also simplifies the regulatory language regarding the Secretary's authorities to investigate,

penalize, and prevent violations of the law, often by referring directly to the statutory authorities.

Subpart G: Appeals

This subpart clarifies the actions subject to administrative and judicial appeal, and the appeal procedures.

Appendices

For transparency and certainty, the following are included as Appendices to the proposed rule: (1) Information required in an application, (2) application submission instructions, (3) information to be included in a license, and (4) the 2017 Interagency MOU. Because license modifications are required prior to taking any action that would result in the information included in the license becoming inaccurate, it is important to note what information Commerce proposes to include in the license (Appendix C).

Classification

Commerce seeks public comment on the below regulatory analyses, including the analysis of entities affected, estimated burdens to industry, and anticipated benefits to society. Commerce welcomes public input on the monetary and non-monetary burdens imposed under the existing regulations, as well as those estimated under the proposed rule. Commerce also welcomes information on regulatory alternatives consistent with the Act that better address the goals of this Administration and of the statutes and Executive Orders described below.

Regulatory Planning and Review—Executive Orders 12866 and 13563

E.O. 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is significant for purposes of E.O. 12866.

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. Commerce has developed this rule in a manner consistent with these requirements. This proposed rule is consistent with E.O. 13563, and in particular with the requirement of retrospective analysis of existing rules, designed ''to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives,'' for the reasons given below. In addition, its requirement to make standard conditions to be included in licenses issued under the regulations subject to notice and comment rulemaking will greatly enhance transparency, predictability and certainty for potential market entrants.

Commerce believes that there is substantial information demonstrating the need for and consequences of the proposed action because it has engaged with the industry and the public in recent years, including through NOAA's Advisory Committee on Commercial Remote Sensing (ACCRES), to study changes in the industry. Through direct contact with the remote sensing space industry, ACCRES, and other fora, Commerce is well informed about the growth in the industry and the challenges imposed by the existing regulations. Commerce also seeks public input on this proposed rule to obtain even more information about the need for and consequences of its proposed course of action.

Commerce believes that the rule will reduce the monetary and non-monetary burdens imposed by the regulation of remote sensing, and seeks public comment on this issue. Moreover, Commerce believes that the potential benefits to society resulting from the proposed rule are large relative to any potential costs, primarily because it is the longstanding policy of the United States to endeavor to keep the United States as the world leader in the strategic remote sensing industry. In Commerce's view, the benefit to society of this regulatory program is primarily to better preserve U.S. national security, which is admittedly difficult to quantify. Due to the national security benefits accrued, it is critical that the most innovative and capable remote sensing systems be licensed to do business from within the United States. A regulatory approach that is less burdensome to industry and thereby encourages businesses not to leave the United States, therefore, is a benefit to U.S. national security.

Commerce believes that the proposed regulations will result in no incremental costs to society as compared with the status quo. Generally, the costs to society that might be expected from regulations implementing the Act would be additional barriers to entry in the remote sensing field, and increased costs to operate in this industry. However, the proposed rule takes a significantly lighter regulatory approach than the existing regulations and increases certainty, transparency, and predictability, while still allowing Commerce to preserve U.S. national security and observe international obligations as required by the Act. For these reasons, Commerce believes that the benefits of the proposed rule vastly outweigh its costs, which are expected to be reduced by the proposed rule. Nevertheless, Commerce seeks public input on this issue, and welcomes any quantification of these costs and benefits that would help inform this analysis.

Executive Order 13771

This proposed rule is expected to be a deregulatory action under E.O. 13771. Commerce requests public comment on whether affected entities anticipate cost savings from the proposed rule, and in what amount.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed rule, it must prepare, and make available for public comment, an initial regulatory flexibility analysis (IRFA) that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). Accordingly, Commerce has prepared the below IRFA for this proposed rule, and seeks public comment on the regulatory burdens associated with the proposed rule.

This IRFA describes the economic impact this proposed rule, if adopted, would have on small entities in the space-based remote sensing industry (NAICS 336414, defined as having less than 1,250 employees). A description of the reasons for the action, the objectives of and legal basis for this action are contained in the Summary section of the preamble. The reporting, recordkeeping, and compliance requirements are described in the Paperwork Reduction Act analysis below and the Subpart-by-Subpart Overview. Commerce does not believe there are other relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

At the time of the last issuance of a final rule on this subject, Commerce found that the rule would not have a significant economic impact on a substantial number of small entities due to the ''extraordinary capitalization

required'' to develop, launch, and operate a private remote sensing space system. Since that time, significant technological developments have greatly reduced these costs: For example, such developments have resulted in reduced costs to launch partly due to greater competition, and small satellites have become cheaper to produce due to standardization. These changes and others have enabled small businesses, universities, secondary and elementary school classes, and other small entities to enter this field. Based on an analysis of the last decade's license applications and an attempt to project those trends into the future, Commerce estimates that several dozen and up to a couple hundred small entities may be affected by this proposed rule in the years to come.

Commerce has attempted to minimize the economic impact to small businesses in its proposed rule. Most notably, Commerce has proposed a two-category framework that establishes less burdensome regulatory requirements on low-risk systems. Commerce anticipates that future small businesses would be likely to operate low-risk systems, especially because the rule requires Commerce to update the low-risk criteria at least every two years. The low-risk requirements involve significantly less burdensome and less frequent compliance reporting than the existing regulations. For example, low-risk systems are required only to submit an application and, after the grant of a license, an annual certification that all information remains true. This is significantly less than the existing paperwork burden, which includes quarterly and annual audits, and data protection plans.

However, even if small businesses operate ''high-risk'' systems under the proposed rule, the majority of them would nevertheless receive significant benefits compared to the status quo. Commerce has estimated that over 80 percent of all future applicants, whether low- or high-risk, would likely receive only the standard license conditions specified in the rule, and not be subject to individualized interagency review or specialized license conditions. This results in significantly increased transparency and certainty for small businesses, even if they are operating ''high-risk'' systems.

Commerce considered four alternatives to the proposed rule. The first alternative was to retain the status quo and not update the regulations. As stated above, however, the proposed rule was promulgated under the now-outdated assumption that small businesses, for financial reasons, would not enter the space-based remote sensing industry. Experience has demonstrated that small businesses are now participating in this industry and they are required to comply with the existing regulations' requirements. Commerce estimates that the proposed rule would result in significantly lower regulatory burdens on almost all of these businesses as compared with the existing regulations, as evidenced by the dramatically reduced paperwork burden discussed below in the Paperwork Reduction Act section. Therefore, Commerce does not believe that the status quo alternative would minimize any significant economic impact on small businesses.

The second alternative was to retain the simplified, non-differentiated structure of the status quo regulations, updating them only for technological developments. In other words, Commerce could have retained the bulk of the existing regulations and edited them in minor ways only to account for technological changes since 2006. For the same reasons as those given above, Commerce believes that this alternative would not have minimized any significant economic impact on small businesses. As stated above, the proposed rule will result in significantly less paperwork for all licensees, and in dramatically increased certainty and transparency for the vast majority of licensees, which will provide small businesses in this industry with a much lighter regulatory approach that is not available under the existing regulations' framework.

The third alternative was to repeal the status quo regulations and not replace them, instead relying solely on the terms of the Act. The Act gives the Secretary the authority to issue regulations and requires the Secretary to publish a complete list of information required to apply for a license in the **Federal Register**, but regulations are not required. Commerce believes this alternative, however, would result in too little transparency, predictability, and certainty for businesses, particularly small businesses that lack the resources to invest in designing a potential system without any prior insight into the process for application review or expected license conditions. Therefore, this alternative is likely to result in fewer small businesses entering the remote sensing market. Additionally, without processes and standards for Commerce's decisions set in regulations, Commerce's actions towards individual applicants and licensees might have the appearance of being arbitrary and capricious.

The fourth alternative was to update the status quo regulations to provide an expanded role for the Departments of Defense and State, and the Office of the Director of National Intelligence, in recognition of the threat to national security posed by some of the latest technological developments. This alternative would provide more certainty to the U.S. Government in its ability to completely address national security concerns arising from particular systems. However, Commerce believes the resulting harm to industry from the reduced certainty, increased delays and increased cost in some cases would frustrate the policy for the U.S. remote sensing industry to maintain its world leadership role and would particularly affect small businesses in that regard.

Paperwork Reduction Act

This proposed rule contains a revised collection-of-information requirement subject to the Paperwork Reduction Act (PRA, 44 U.S.C. 3501 *et seq.*) that will modify the existing collection-of-information requirement that was approved by OMB under control number 0648–0174 in January, 2017. This revised requirement will be submitted to OMB for approval along with the proposed rule.

Public reporting burden for this requirement is estimated to average: 20 hours for the submission of a license application; 10 hours for the completion of a Cybersecurity Framework (high-risk systems only); 1 hour for the submission of a notification of each deployment to orbit; 1 hour for the submission of notification of a system anomaly or disposal; 1 hour for notification of financial insolvency; 1 hour for a license modification request (if the licensee desires one); 10 hours for completion of an Orbital Debris Mitigation Standard Practices (ODMSP) plan, and 2 hours for an annual compliance certification (low- and high-risk systems), plus 2 additional hours for a semiannual compliance certification (high-risk systems only). Commerce estimates that this burden is less than half of the existing paperwork burden (an estimated 48 hours compared with 110). Commerce invites public comment on the accuracy of the existing burdens and our estimates of the burdens under the proposed rule.

The public burden for this collection of information includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Regardless of any other provision of the law, no person is required to respond to, nor shall any

person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

For ease of comparison between the existing and proposed revised paperwork burdens, Commerce provides the following table:

TABLE 1

Document	Existing burden (hrs)	Proposed burden (hrs)
Application	40	20
Data Protection Plan (including data flow diagram, plans to comply with Kyl-Bingaman and data collection restrictions).	23	n/a
Cybersecurity Framework (high-risk only)	n/a	10
License amendment (Modification)	10	1
Public summary	2	n/a
Foreign agreements notifications	2	n/a
Completion of Pre-Ship Review	1	n/a
Information when Spacecraft Becomes Operational	2	1
Demise of System or Discontinuation of Operations	2	n/a
Orbital Debris Mitigation Standard Practices Plan	Comparable to existing part of application	10
Operational Deviation	4	1
Financial Insolvency	n/a	1
Planned Information Purge	2	n/a
Operational Quarterly Report	3	n/a
Semiannual Compliance Certification (high-risk only)	n/a	2
Annual Compliance Audit (Certification)	8	2
Annual Operational Audit	10	n/a
Total	110	48

National Environmental Policy Act

Publication of this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

List of Subjects in 15 CFR Part 960

Administrative practice and procedure, confidential business information, Penalties, Reporting and record keeping requirements, Satellites, Scientific equipment, Space transportation and exploration.

Dated: April 29, 2019.

Stephen Volz,

Assistant Administrator for Satellite and Information Services, National Oceanic and Atmospheric Administration, Department of Commerce.

For the reasons set forth above, 15 CFR part 960 is proposed to be revised as follows:

PART 960—LICENSING OF PRIVATE REMOTE SENSING SPACE SYSTEMS

Subpart A—General

Sec.

Subpart B—Risk Categories and General Interagency Consultation Processes

Subpart C—License Application Submission and Categorization

Subpart D—Low-Risk Category

Subpart E—High-Risk Category

Subpart F—Prohibitions and Enforcement

Subpart G—Appeals Regarding Licensing Decisions

Authority: 51 U.S.C. 60124.

15 CFR Part 960

Subpart A—General

§ 960.1 Purpose.

These regulations implement the Secretary's authority to license the operation of private remote sensing space systems under the Land Remote Sensing Policy Act of 1992, as amended, codified at 51 U.S.C. 60101 *et seq.*

§ 960.2 Jurisdiction.

These regulations set forth the requirements for the operation of private remote sensing space systems within the United States or by a United States citizen. The Secretary does not authorize the use of spectrum for radio communications by a private remote sensing space system, and in the case of a system that is used for remote sensing and other purposes, as determined by the Secretary, the scope of the license issued under this part will not extend to the operation of instruments that do not support remote sensing.

§ 960.3 Applicability to existing licenses.

Licensees that have obtained license(s) under the procedures established in 15 CFR part 960 (2006) may request, in writing to the Secretary, that such license(s) be replaced with one developed in accordance with this part. Such requests would be processed, in the sole discretion of the Secretary, in accordance with the procedures for new applications in Subparts C, D, and E, as appropriate. During this process, the licensee's existing license(s) would remain valid.

§ 960.4 Definitions.

For purposes of this part, the following terms have the following meanings:

Act means the Land Remote Sensing Policy Act of 1992, as amended, codified at 51 U.S.C. 60101 *et seq.*

Anomaly means an unexpected event or abnormal characteristic that could indicate a technical malfunction or security threat.

Appellant means a person to whom the Secretary has certified an appeal request.

Applicant means a person who submits an application to operate a private remote sensing space system.

Application means a document submitted by a person to the Secretary that contains all the information described in Appendix A of this part.

Data means the output from a remote sensing instrument, regardless of level of processing.

Days means working days if referring to a number equal to or less than ten, and calendar days if greater than ten.

Ground sample distance or *GSD* refers to the common measurement for describing the spatial resolution of data created from most remote sensing instruments, typically measured in meters.

In writing or *written* means written communication transmitted via email, forms submitted on the Secretary's website, and traditional mail.

License means a license granted by the Secretary under the Act.

Licensee means a person to whom the Secretary has granted a license under the Act.

Material fact means any fact an applicant provides in the application (apart from its ODMSP plan), or any fact in Parts C or D of a license derived from information an applicant or licensee provides to the Secretary. Material facts include, but are not limited to, the description of all components of the system and the identity and description of the person.

Memorandum of Understanding or *MOU* means the ''Memorandum of Understanding Among the Departments of Commerce, State, Defense, and Interior, and the Office of the Director of National Intelligence, Concerning the Licensing and Operations of Private Remote Sensing Satellite Systems,'' dated April 25, 2017, which remains in effect and is included in Appendix D of this part. In the event that any provisions of the MOU conflict with this part, this part shall govern.

Modification means any change in the text of a license, whether requested by the licensee or required by the Secretary in accordance with the procedures in this part.

Operate means to control the functioning of a remote sensing space system. If multiple persons manage various components of a remote sensing space system, the person with primary control over the functioning of the remote sensing instrument shall be deemed to operate the remote sensing space system.

Person or *private sector party* means any entity or individual other than agencies or instrumentalities of the U.S. Government.

Private remote sensing space system or *system* means a remote sensing space system in which the remote sensing instrument is not owned by an agency or instrumentality of the U.S. Government.

Remote sensing means the collection and transmission of data about a sensed object by making use of the electromagnetic waves emitted, reflected, or diffracted by the sensed object. Sensing shall not be considered remote if the sensing instrument is physically attached to the primary sensed object and cannot be maneuvered to effectively sense any other object.

Remote sensing instrument means a device that can perform remote sensing.

Remote sensing space system means all components that support remote sensing to be or being conducted from an orbit of the Earth or another celestial body, including the remote sensing instrument(s), the (one or more) spacecraft upon which the remote sensing instrument(s) is (are) carried, facilities wherever located, and any other items that support remote sensing and data management, regardless of whether the component is owned or managed by the applicant or licensee.

Secretary means the Secretary of Commerce, or his or her designee.

Significant or substantial foreign agreement means any contract or legal arrangement with any foreign national, entity, or consortium involving foreign nations or entities, the execution of which will require the prior approval of a license modification.

Subsidiary or affiliate means a person that is related to the applicant or licensee by shareholdings or other means of control.

Unenhanced data means remote sensing signals or imagery products that are unprocessed or preprocessed.

United States citizen means:

(1) Any individual who is a citizen of the United States; and

(2) Any corporation, partnership, joint venture, association, or other entity organized or existing under the laws of the United States or any State.

Subpart B—Risk Categories and General Interagency Consultation Processes

§ 960.5 Risk categories generally.

(a) To promote the swift processing of applications and the appropriate level of continuing supervision, the Secretary, after consultation with appropriate agencies and subject to the interagency dispute resolution procedures in Section IV(B) of the MOU, shall group applications into categories. These categories shall reflect the relative risks to national security and international obligations and policies presented by the proposed operation of the system. Applications will be categorized as either low-risk or high-risk based on the Secretary's evaluation of the criteria in § 960.6. The Secretary will follow the procedures in this subpart to revise these criteria.

(b) Licenses will contain different conditions based on their categorization. The standard license conditions for low- and high-risk applications are found in subparts D and E, respectively. The Secretary will follow the procedures given in this subpart to revise the standard license conditions.

(c) In carrying out this part, the Secretary and any agency with a role under this part shall take into consideration the following, among other appropriate considerations:

(1) Technological changes in remote sensing;

(2) Non-technological changes in the remote sensing space industry, such as to business practices;

(3) Changes in the national security and international obligation and policy environment which affects the risks posed by such systems;

(4) The relative costs to licensees and benefits to national security and international obligations and policies of license conditions;

(5) Changes in the methods available to mitigate risks to national security and international obligations and policies;

(6) The prevalence and capabilities of systems in other nations;

(7) The remote sensing regulatory environment in other nations;

(8) The potential for overlapping regulatory burdens imposed by other U.S. Government agencies; and

(9) The commercial availability of comparable data from other space-based and non-space-based sources.

§ 960.6 Low-risk category criteria.

When determining whether a system, as proposed in the license application, should be categorized as low-risk under the procedures at § 960.10, the Secretary shall use the following criteria. The system must:

(a) Be capable of operating only in one or both of the following electro-optical spectral ranges:

(1) In a panchromatic band in the spectral range between 370–900 nanometers, and with a maximum resolution of 15 meters GSD;

(2) In no more than four multispectral bands in the spectral range between 370–1100 nanometers, and with a maximum resolution of 30 meters GSD;

(b) Be capable of operating only using the following spectral bandwidths for multispectral systems:

(1) Any bandwidth if the resolution is coarser than or equal to 30 meters GSD;

(2) Individual minimum spectral bandwidth(s) wider than 99 nanometers if the resolution is finer than 30 meters GSD;

(c) Encrypt tracking, telemetry, and control transmissions where the key length is at least 128 bits, if the system has propulsion;

(d) Be incapable of imaging the same center point of an image on Earth more than once in 24 hours from one or more satellites in a constellation, including by slewing or redirecting the satellite or remote sensing instrument;

(e) Be incapable of capturing video, defined as:

(1) Imaging more than one frame every 10 seconds if the remote sensing instrument's resolution is finer than 30 meters GSD; or

(2) Imaging more than 30 frames per second if the remote sensing instrument's resolution is coarser than or equal to 30 meters GSD;

(f) Contain no more than three operational spacecraft;

(g) Not, as described in its mission profile, disseminate data to the public within 12 hours of collection;

(h) Not have any foreign involvement, meaning that:

(1) No foreign nationals or entities have any ownership interest in the licensee; and

(2) No foreign nationals or entities manage any components of the system;

(i) Not, as described in its mission profile, perform night-time imaging, defined as imaging an area of the Earth's surface when the sun elevation is six degrees or more below the Earth's horizon relative to the imaged area with a resolution finer than 30 meters GSD;

(j) Not, as described in its mission profile, perform non-Earth imaging, defined as conducting remote sensing of an artificial object in space.

§ 960.7 Process for revising low-risk category criteria.

(a) At least every two years, the Secretary will consider, in consultation with the Secretaries of Defense and State, and determine whether to revise the criteria listed in § 960.6.

(b) When the Secretary determines that it is prudent to revise the criteria, the Secretary shall consult with the Secretaries of Defense and State on all matters affecting national security and international obligations and policies, and other U.S. Government agencies as deemed appropriate by the Secretary.

(c) If the Secretary determines that the criteria listed in § 960.6 require revision, the Secretary shall promulgate revisions to those criteria following public notice and comment in the **Federal Register**.

(d) If, at any point during the procedures in this section, any of the Secretaries objects to any determination, they may elevate the objection pursuant to the interagency dispute resolution procedures in Section IV(B) of the MOU.

§ 960.8 Process for revising standard license conditions.

(a) At least every two years, the Secretary will consider, in consultation with the Secretaries of Defense and State, and determine whether to revise the standard license conditions provided in subparts D and E of this part for low- and high-risk systems, respectively.

(b) When the Secretary determines that it is prudent to revise the standard license conditions, the Secretary shall consult with the Secretaries of Defense and State on all matters affecting national security and international obligations and policies, and other U.S. Government agencies as the Secretary deems appropriate.

(c) The Secretaries of Defense and State will determine the standard license conditions necessary for low- and high-risk systems, consistent with the Act, to meet national security concerns and international obligations and policies of the United States, respectively. The Secretaries of Defense and State will notify the Secretary of such conditions.

(d) The Secretary shall review the determinations under paragraph (c) of this section and, in consultation with the Secretaries of Defense and State, determine whether the concerns addressed therein cannot reasonably be mitigated by the United States.

(e) If the Secretary determines that the standard license conditions in subparts D and E of this part require revision, the Secretary shall promulgate revisions to those conditions following public notice and comment in the **Federal Register**.

(f) If, at any point during the procedures in this section, the Secretary, the Secretary of Defense, or the Secretary of State objects to any determination, they may elevate the objection pursuant to the interagency dispute resolution procedures in Section IV(B) of the MOU.

(g) As the Secretary deems necessary, the Secretary may consult with the Secretary of the Interior to inform the Secretary's determination of whether to designate unenhanced data that the licensee must provide.

(h) If the Secretary promulgates revised standard license conditions, those revised standard license conditions will not automatically apply to existing licenses. The Secretary shall notify licensees of any changes to standard license conditions resulting from the above procedures, and remind licensees that they may request that the Secretary approve a modification to their license if they would like an updated standard license condition to apply to them.

Subpart C—License Application Submission and Categorization

§ 960.9 Application submission.

(a) Before submitting an application, a person may consult informally with the Secretary to discuss matters under this part, including whether a license is likely to be required for a system.

(b) A person may submit an application for a license in accordance with the specific instructions found in Appendix B of this part. The application must contain fully accurate and responsive information, as described in Appendix A of this part.

(c) Within five days of the submission, the Secretary, after consultation with the Secretaries of Defense and State and subject to the interagency dispute resolution procedures in Section IV(B) of the MOU, shall determine whether the submission is a complete application meeting the requirements of Appendix A of this part. If the submission is a complete application, the Secretary shall immediately notify the applicant in writing. If the submission is not a complete application, the Secretary

shall inform the applicant in writing of what additional information or clarification is required to complete the application.

(d) If any information the applicant submitted becomes inaccurate or incomplete at any time after submission to the Secretary but before license grant or denial, the applicant must contact the Secretary and submit correct and updated information as instructed by the Secretary. The Secretary will determine whether the change is significant. If the Secretary makes that determination, the Secretary will notify the applicant that the revision constitutes a new application, and that the previous application is deemed to have been withdrawn.

(e) Upon request by the applicant, the Secretary shall provide an update on the status of their application review.

§ 960.10 Application categorization.

(a) Within five days of the Secretary's notification to the applicant under § 960.9(c) that the application is complete, the Secretary shall make an initial determination of the appropriate category as follows:

(1) If the Secretary determines that the application meets all the criteria in § 960.6, the Secretary:

(i) Shall categorize the application as low-risk; or

(ii) May, in exceptional circumstances, if the Secretary determines the application presents a novel or not previously licensed capability with unforeseen risk to national security or compliance with international obligations or policies, categorize the application as high-risk.

(2) If the Secretary determines that the application does not meet all the criteria in § 960.6, the Secretary:

(i) Shall categorize the application as high-risk; or

(ii) May, if the Secretary determines the application presents a low risk to national security and international obligations and policies, categorize the application as low-risk.

(b) If the Secretary makes an initial determination that an application is high-risk, the Secretary shall also make an initial determination of whether the application should be subject to specific license conditions under § 960.18. The Secretary shall presume that the standard license conditions are sufficient, unless the application presents a novel or not previously licensed capability with unforeseen risk to national security or compliance with international obligations and policies.

(c) The Secretary shall notify the Secretaries of Defense and State of the Secretary's initial determinations under paragraphs (a) and (b) of this section as applicable.

(d) If the Secretary of Defense or the Secretary of State objects to the Secretary's initial determinations in paragraph (a) or (b) of this section within 10 days, and the Secretary disagrees with the grounds given for the objection, the Secretary shall immediately elevate the objection pursuant to the interagency dispute resolution procedures in Section IV(B) of the MOU.

(e) Within 25 days of the Secretary's notification to the applicant under § 960.9(c), the Secretary shall notify the applicant in writing of the category determination unless the category determination is subject to interagency dispute resolution in accordance with paragraph (d) of this section. This notification shall not be a final agency action.

(f) If at any time during the review of the application the Secretary determines, in consultation with the Secretaries of Defense and State, that it is prudent to change the category determination of the application, the Secretary may do so, and shall notify the applicant. If the Secretary of Defense or the Secretary of State objects to the Secretary's decision to change the category determination, and the Secretary disagrees with the grounds given for the objection, the Secretary shall immediately elevate the objection pursuant to the interagency dispute resolution procedures in Section IV(B) of the MOU.

Subpart D—Low-Risk Category

§ 960.11 General.

This subpart provides the procedures that the Secretary will follow when considering applications the Secretary determines to be low-risk and, if a license is granted, the license conditions and other terms that will be included in such licenses.

§ 960.12 License grant or denial.

(a) Based on the Secretary's review of the application, the Secretary must determine whether the applicant will comply with the requirements of the Act, this part, and the license. The Secretary will presume that the applicant will comply, unless the Secretary has specific, credible evidence to the contrary. If the Secretary determines that the applicant will comply, the Secretary shall grant the license.

(b) The Secretary shall make the determination in paragraph (a) of this section within 60 days of the notification under § 960.9(c), and shall notify the applicant in writing whether the license is granted or denied.

(c) If the Secretary has not notified the applicant whether the license is granted or denied within 60 days, the applicant may submit a request that the license be granted. Within three days of this request, the Secretary shall grant the license, unless the Secretary determines, with specific, credible evidence, that the applicant will not comply with the requirements of the Act, this part, or the license, or the Secretary and the applicant mutually agree to extend this review period.

§ 960.13 Standard license conditions.

(a) All licenses granted under this subpart shall contain the following standard conditions, which cannot be waived. Each license shall specify that the licensee shall:

(1) Comply with the Act, this part, the license, applicable domestic legal obligations, and the international obligations of the United States;

(2) Operate the system in such manner as to preserve the national security of the United States and to observe international obligations and policies, as articulated in the other conditions included in this license;

(3) Upon request, make available to the government of any country (including the United States) unenhanced data collected by the system concerning the territory under the jurisdiction of such government as soon as such data are available and on reasonable terms and conditions, unless doing so would be prohibited by law or license conditions;

(4) Make the following unenhanced data available in accordance with 51 U.S.C. 60141: None;

(5) In order to make disposition of any satellites in space in a manner satisfactory to the President upon termination of operations under the license:

(i) Comply with the latest version of the Orbital Debris Mitigation Standard Practices (ODMSP) issued by the U.S. Government; and

(ii) Maintain at all times an up-to-date document that explains how the licensee will comply with the ODMSP;

(6) Notify the Secretary in writing:

(i) Of the launch and deployment of each system component, to include confirmation that the component matches the orbital parameters and data collection characteristics of the system, as described in Part D of the license, no later than five days after that event; and

(ii) Of any deviation of an on-orbit component of the system from the orbital parameters and data collection characteristics of the system, as

described in Part D of the license, no later than five days after that event; and

(7) Request and receive approval for a license modification before taking any action that would contradict a material fact in the license, including executing any significant or substantial foreign agreement.

(b) All licenses granted under this subpart shall also contain the following standard conditions, which may be waived or adjusted following the procedures in paragraph (c) of this section. Each license shall specify, absent an approved request to waive or adjust any of the conditions in paragraphs (b)(1) through (7) of this section, that the licensee shall:

(1) Refrain from disseminating data of the State of Israel (SOI) area at a resolution more detailed than two meters GSD. The SOI area includes the SOI and those territories occupied by the SOI in June 1967 (the Gaza Strip, the Golan Heights, and the West Bank);

(2) Certify that all material facts in the license remain accurate pursuant to the procedures in § 960.15 no later than October 15th of each year;

(3) Cooperate with compliance, monitoring, and enforcement authorities described in the Act and this part, and permit the Secretary to access, at all reasonable times, any component of the system for the purpose of ensuring compliance with the Act, the regulations, and the license;

(4) Notify the Secretary in writing no later than five days after each disposal of an on-orbit component of the system;

(5) Notify the Secretary in writing no later than five days after detection of an anomaly affecting the system, including, but not limited to, an anomaly resulting in loss of ability to operate an on-orbit component of the system;

(6) Notify the Secretary in writing no later than five days after the licensee's financial insolvency or dissolution; and

(7) Protect the system and data therefrom by:

(i) Implementing appropriate National Institute of Standards and Technology (NIST)-approved encryption, in accordance with the manufacturer's security policy, and wherein the key length is at least 128 bits, for communications to and from the on-orbit components of the system related to tracking, telemetry, and control; and

(ii) Implementing measures, consistent with industry best practice, that prevent unauthorized access to the system and identify any unauthorized access.

(c) As part of the application, the applicant may request that any license condition listed in paragraph (b) of this section be waived or adjusted. The Secretary may approve the request to waive or adjust any such condition if, after consultation with the Secretaries of Defense and State as appropriate and subject to the interagency dispute resolution procedures in Section IV(B) of the MOU, the Secretary determines that:

(1) The requirement is not applicable due to the nature of the applicant or the proposed system;

(2) The applicant will achieve the goal in a different way; or

(3) There is other good cause to waive or adjust the condition.

(d) No other conditions shall be included in a license granted under this subpart, or imposed in such a license after the license has been issued except in accordance with the provisions of § 960.14 or § 960.26.

§ 960.14 Licensee-requested modifications.

(a) The licensee may request in writing that the Secretary modify the license. Such requests should include the reason for the request and relevant supporting documentation.

(b) If the Secretary believes that license conditions might be available that are less burdensome than those currently in a license, the Secretary shall notify the licensee and invite the licensee to request a modification.

(c) The Secretary may approve or deny a modification request after consultation with the Secretaries of Defense and State as appropriate.

(d) If the Secretary determines, after consultation with the Secretaries of Defense and State as appropriate, that the requested modification of a license would result in its re-categorization from low-risk to high-risk, the Secretary shall consult with the Secretaries of Defense or State, as appropriate, to determine whether approval of the request may require additional conditions. If so, the Secretary may also approve the modification request subject to additional conditions after notifying the licensee that approval would require such additional conditions, and giving the licensee an opportunity to withdraw or revise the request.

(e) If, at any point during the procedures in paragraph (d) of this section, the Secretary, the Secretary of Defense, or the Secretary of State objects to any determination, they may elevate the objection pursuant to the interagency dispute resolution procedures in Section IV(B) of the MOU.

(f) The Secretary shall inform the licensee of the decision under paragraph (c) of this section or a determination under paragraph (d) of this section within 30 days of the request, unless elevation is ongoing under paragraph (e) of this section.

§ 960.15 Routine compliance and monitoring.

(a) By the date specified in the license, the licensee will certify in writing to the Secretary that each material fact in the license remains accurate.

(b) If any material fact in the license is no longer accurate at the time the certification is due, the licensee must:

(1) Provide all accurate material facts;

(2) Explain the reason for any discrepancies between the terms in the license and the accurate material fact; and

(3) Seek guidance from the Secretary on how to correct any errors, which may include requesting a license modification.

§ 960.16 Term of license.

(a) The license term begins when the Secretary transmits the signed license to the licensee, regardless of the operational status of the system.

(b) The license is valid until the Secretary confirms in writing that the license is terminated, because the Secretary has determined that one of the following has occurred:

(1) The licensee has successfully disposed of, or has taken all actions necessary to successfully dispose of, all on-orbit components of the system in accordance with applicable license conditions, and is in compliance with all other requirements of the Act, this part, and the license;

(2) The licensee never had system components on orbit and has requested to end the license term;

(3) The license is terminated pursuant to § 960.26; or

(4) The licensee has executed one of the following transfers, subsequent to the Secretary's approval of such transfer:

(i) Ownership of the system, or the operations thereof, to an agency or instrumentality of the U.S. Government;

(ii) Operations to a person who:

(A) Will not operate the system from the United States, or

(B) Is not a United States citizen.

Subpart E—High-Risk Category

§ 960.17 General.

This subpart provides the procedures that the Secretary will follow when considering applications the Secretary determines to be high-risk and, if a license is granted, the standard license conditions and other terms that will be included in such licenses, and the

process for determining any specific license conditions, if necessary.

§ 960.18 Specific license conditions.

(a) If, based on the determination in § 960.10, the Secretary concludes that specific license conditions may be necessary, the following process will apply.

(b) The Secretaries of Defense and State, after consulting with any other U.S. Government agencies they deem appropriate, will determine whether any specific license conditions are necessary (in addition to the standard license conditions in § 960.20) to meet national security concerns and international obligations and policies of the United States regarding that application. The Secretaries of Defense and State will notify the Secretary of any such conditions.

(c) The Secretary shall review the notifications under paragraph (b) of this section and aim to craft the least burdensome specific license conditions possible by:

(1) Determining, in consultation with the Secretaries of Defense and State as appropriate, whether the concerns addressed therein can reasonably be mitigated by the U.S. Government; and

(2) Determining, in consultation with the applicant, whether the concerns addressed therein can reasonably be mitigated by the applicant.

(d) If, at any point during the above procedures, the Secretary, the Secretary of Defense, or the Secretary of State objects to any determination, they may elevate the objection pursuant to the interagency dispute resolution procedures in Section IV(B) of the MOU.

§ 960.19 License grant or denial.

(a) Based on the Secretary's review of the application, the Secretary must determine whether the applicant will comply with the requirements of the Act, this part, and the license. The Secretary will presume that the applicant will comply, unless the Secretary has specific, credible evidence to the contrary. If the Secretary determines that the applicant will comply, the Secretary shall grant the license.

(b) The Secretary shall make the above determination within 90 days of the notification under § 960.9(c), and shall notify the applicant in writing whether the license is granted or denied.

(c) If the Secretary has not notified the applicant whether the license is granted or denied within 90 days, the applicant may submit a request that the license be granted. Within 10 days of this request, the Secretary shall either:

(1) Grant the license unless the Secretary can determine, with specific credible evidence, that the applicant will not comply with the requirements of the Act, this part, or the license; or

(2) Notify the applicant in writing of any pending issues and of specific actions required to resolve them, and grant or deny the application within 60 days of that notification, unless the Secretary and the applicant mutually agree to extend this review period.

§ 960.20 Standard license conditions.

(a) Any license granted under this subpart shall contain the conditions determined through the process in § 960.18, if applicable, as well as the standard conditions in this section.

(b) All licenses granted under this subpart shall contain the following standard conditions, which cannot be waived. Each license shall specify that the licensee shall:

(1) Comply with the Act, this part, and the license, applicable domestic legal obligations, and the international obligations of the United States;

(2) Operate the system in such manner as to preserve the national security of the United States and to observe international obligations and policies, as articulated in the other conditions included in this license;

(3) Upon request, make available to the government of any country (including the United States) unenhanced data collected by the system concerning the territory under the jurisdiction of such government as soon as such data are available and on reasonable terms and conditions, unless doing so would be prohibited by law or license conditions;

(4) Make the following unenhanced data available in accordance with 51 U.S.C. 60141: None;

(5) In order to make disposition of any satellites in space in a manner satisfactory to the President upon termination of operations under the license:

(i) Comply with the latest version of the Orbital Debris Mitigation Standard Practices (ODMSP) issued by the U.S. Government; and

(ii) Maintain at all times an up-to-date document that explains how the licensee will comply with the ODMSP;

(6) Notify the Secretary in writing:

(i) Of the launch and deployment of each system component, to include confirmation that the component matches the orbital parameters and data collection characteristics of the system, as described in subpart D of this part of the license, no later than five days after that event; and

(ii) Of any deviation of an on-orbit component of the system from the orbital parameters and data collection characteristics of the system, as described in subpart D of this part of the license, no later than five days after that event; and

(7) Request and receive approval for a license modification before taking any action that would contradict a material fact in the license, including executing any significant or substantial foreign agreement.

(c) All licenses granted under this subpart shall also contain the following standard conditions, which may be waived or adjusted following the procedures in paragraph (d) of this section. Each license shall specify, absent an approved request to waive or adjust any of the conditions in paragraphs (c)(1) through (12) of this section, that the licensee shall:

(1) Refrain from disseminating data of the State of Israel (SOI) area at a resolution more detailed than two meters GSD. The SOI area includes the SOI and those territories occupied by the SOI in June 1967 (the Gaza Strip, the Golan Heights, and the West Bank);

(2) Certify that all material facts in the license remain accurate pursuant to the procedures in § 960.23 no later than April 15th and October 15th of each year;

(3) Cooperate with compliance, monitoring, and enforcement authorities described in the Act and this part, and permit the Secretary to access, at all reasonable times, any component of the system for the purpose of ensuring compliance with the Act, the regulations, and the license;

(4) Notify the Secretary in writing no later than five days after each disposal of an on-orbit component of the system;

(5) Notify the Secretary in writing no later than five days after detection of an anomaly affecting the system, including, but not limited to, an anomaly resulting in loss of ability to operate an on-orbit component of the system;

(6) Notify the Secretary in writing no later than five days after the licensee's financial insolvency or dissolution;

(7) Protect the system and data therefrom by:

(i) Implementing appropriate National Institute of Standards and Technology (NIST)-approved and validated encryption, in accordance with the manufacturer's security policy, and wherein the key length is at least 256 bits, for communications to and from the on-orbit components of the system related to tracking, telemetry, and control, and data transmissions throughout the system;

(ii) Implementing measures, consistent with industry best practice, that prevent unauthorized access to the

system and identify any unauthorized access; and

(iii) Maintaining a document which describes the means by which the licensee will comply with the conditions in paragraphs (c)(7)(i) and (ii) of this section, using the latest version of the NIST Cybersecurity Framework;

(8) Comply with limited operations directives issued by the Secretary, in accordance with a request issued by the Secretary of Defense or the Secretary of State pursuant to the procedures in Section IV(D) of the MOU, that require licensees to temporarily limit data collection and/or distribution in exceptional circumstances to meet significant concerns about national security and international policy; and

(i) Be able to comply with limited operations directives at all times;

(ii) Provide and continually update the Secretary with a point of contact and an alternate point of contact for limited operations directives;

(9) If the licensee conducts remote sensing of an artificial object in space (''collects NEI data''), the licensee shall:

(i) Use only the 370–900 nanometers portion of the electromagnetic spectrum while collecting NEI data;

(ii) If the licensee has received written permission to collect NEI data from the operator of the sensed object, the licensee shall request approval from the Secretary to collect that NEI data at least 30 days prior to the planned collection and shall conduct the remote sensing only if the Secretary approves the request. The request shall include an identification of the object; confirmation that the owner and operator have notified applicable manufacturer(s); the orbital location of the object; the licensee's proposed orbital maneuver plan during the remote sensing of the object; dates of the remote sensing; and the distance between the remote sensing instrument and the object.

(iii) If the licensee has not received permission to collect NEI data from the operator of the sensed object, the licensee shall not disseminate or retain in an archive:

(A) NEI data at a resolution finer than 0.5 meters;

(B) NEI data in which the object fills more than 3x3 pixels of the remote sensing instrument's focal plane in two orthogonal axes simultaneously;

(C) Metadata associated with such NEI data, such as time, position, and altitude of the licensee's remote sensing instrument; or

(D) NEI data of an artificial object in space that has not been successfully correlated with the space tracking catalog found at *space-track.org.*

(10) If the licensee collects night-time imaging data (''NTI data''), meaning data of an area of the Earth's surface when the sun's elevation is six degrees or more below the Earth's horizon relative to that area using any remote sensing technique other than synthetic aperture radar, the licensee shall:

(i) Use only the 370–1,100 nanometers portion of the electromagnetic spectrum while collecting NTI data;

(ii) Not disseminate NTI data at a resolution finer than 30 meters GSD;

(iii) Not disseminate or retain in an archive, at any resolution, NTI data of the sites identified in the most recent list of NTI Geographic Exclusion Areas provided by the Secretary; and

(iv) Not disseminate the list of NTI Geographic Exclusion Areas or the information contained therein (by restating, paraphrasing, or incorporating it in a new form) to any person except its employees and contractors to carry out their job-related duties.

(11) If the licensee collects data using the shortwave infrared (1,200–3,000 nanometers) portion of the electromagnetic spectrum (''SWIR data''), the licensee shall not:

(i) Disseminate SWIR data at a resolution finer than 3.7 meters GSD;

(ii) Disseminate or retain in an archive, at any resolution, SWIR data of the sites identified in the most recent list of SWIR Geographic Exclusion Areas provided by the Secretary; or

(iii) Disseminate the list of SWIR Geographic Exclusion Areas or the information contained therein (by restating, paraphrasing, or incorporating it in a new form) to any person except its employees and contractors to carry out their job-related duties.

(12) If the licensee collects data using a synthetic aperture radar (''SAR data''), the licensee shall not:

(i) Disseminate SAR data, associated single-loop complex data, or any complex valued products, at a resolution finer than 0.25 meters impulse response ground plane quality;

(ii) Disseminate SAR phase history data, at any resolution;

(iii) Transmit SAR data to any ground station located outside the United States;

(iv) Utilize any SAR technology, data processing algorithms, or radar signatures developed by the licensee for the U.S. Government, in whole or in part, without the prior written approval of the responsible U.S. Government agency; or

(v) Receive SAR radar pulses from remote sensing instruments not listed in this license.

(d) As part of the application, the applicant may request that any license condition listed in paragraph (c) of this section be waived or adjusted. The Secretary may approve the request to waive or adjust any such condition if, after consultation with the Secretaries of Defense and State as appropriate and subject to the interagency dispute resolution procedures in Section IV(B) of the MOU, the Secretary determines that:

(1) The requirement is not applicable due to the nature of the applicant or the proposed system;

(2) The applicant will achieve the goal in a different way; or

(3) There is other good cause to waive or adjust the condition.

§ 960.21 United States Government-required license modification; reimbursement.

If, after a license is granted under this subpart, the Secretary of Defense determines that a technical modification to a licensed system is necessary to meet a national security concern, the following procedure will apply:

(a) The Secretary of Defense will notify the Secretary of the determination. This determination shall not be delegated below the Secretary of Defense or acting Secretary.

(b) The Secretary will consult with the licensee and with other U.S. Government agencies as appropriate to determine whether the technical modifications will cause the licensee to incur additional costs, or to be unable to recover past development costs (including the cost of capital, but not including anticipated profits nor costs ordinarily associated with doing business abroad).

(c) If the Secretary determines that the licensee will incur additional costs under paragraph (b) of this section, the Secretary may require the U.S. Government agency or agencies who determined these national security concerns to reimburse the licensee for those additional or unrecoverable costs.

(d) The Secretary shall modify the license to reflect the necessary technical modifications and coordinate reimbursement, if applicable.

(e) If, at any point during the above procedures, the Secretary, the Secretary of Defense, or the Secretary of State objects to any determination, they may elevate the objection pursuant to the interagency dispute resolution procedures in Section IV(B) of the MOU.

§ 960.22 Licensee-requested modifications.

(a) The licensee may request in writing that the Secretary modify the license. Such requests should include the reason for the request and relevant supporting documentation.

(b) If the Secretary believes that license conditions might be available that are less burdensome than those currently in a license, the Secretary shall notify the licensee and invite the licensee to request a modification.

(c) The Secretary may approve or deny the modification request after consultation with the Secretaries of Defense and State as appropriate, or consult as appropriate with the Secretaries of Defense or State to determine whether approval of the request may require additional conditions. If so, the Secretary may approve the modification request subject to additional conditions after notifying the licensee that approval would require such additional conditions, and giving the licensee an opportunity to withdraw or revise the request.

(d) If, at any point during the procedures in paragraph (c) of this section, the Secretary, the Secretary of Defense, or the Secretary of State objects to any determination, they may elevate the objection pursuant to the interagency dispute resolution procedures in Section IV(B) of the MOU.

(e) The Secretary shall inform the licensee of the decision under paragraph (c) of this section within 30 days of the request, unless elevation is ongoing under paragraph (d) of this section.

§ 960.23 Routine compliance and monitoring.

(a) By the date(s) specified in the license, the licensee will certify in writing to the Secretary that each material fact in the license remains accurate.

(b) If any material fact in the license is no longer accurate at the time the certification is due, the licensee must:

(1) Provide all accurate material facts;

(2) Explain any discrepancies between the terms in the license and the accurate material fact; and

(3) Seek guidance from the Secretary on how to correct any errors, which may include requesting a license modification.

§ 960.24 Term of license.

(a) The license term begins when the Secretary transmits the signed license to the licensee, regardless of the operational status of the system.

(b) The license is valid until the Secretary confirms in writing that the license is terminated, because the Secretary has determined that one of the following has occurred:

(1) The licensee has successfully disposed of, or has taken all actions necessary to successfully dispose of, all on-orbit components of the system in accordance with applicable license conditions, and is in compliance with all other requirements of the Act, this part, and the license;

(2) The licensee never had system components on orbit and has requested to end the license term;

(3) The license is terminated pursuant to § 960.26; or

(4) The licensee has executed one of the following transfers, subsequent to the Secretary's approval of such transfer:

(i) Ownership of the system, or the operations thereof, to an agency or instrumentality of the U.S. Government;

(ii) Operations to a person who:

(A) Will not operate the system from the United States, or

(B) Is not a United States citizen.

Subpart F—Prohibitions and Enforcement

§ 960.25 Prohibitions.

Any person who operates a system from the United States and any person who is a United States citizen shall not, directly or through a subsidiary or affiliate:

(a) Operate a system without a current, valid license for that system;

(b) Violate the Act, this part, or any license condition;

(c) Submit false information, interfere with, mislead, obstruct, or otherwise frustrate the Secretary's actions and responsibilities under this part in any form at any time, including in the application, during application review, during the license term, in any compliance and monitoring activities, or in enforcement activities; or

(d) Fail to obtain approval for a license modification before taking any action that would contradict a material fact in the license.

§ 960.26 Investigations and enforcement.

(a) The Secretary may investigate, provide penalties for noncompliance, and prevent future noncompliance, by using the authorities specified at 51 U.S.C. 60123(a).

(b) When the Secretary undertakes administrative enforcement proceedings as authorized by 51 U.S.C. 60123(a)(3) and (4), the parties will follow the procedures provided at 15 CFR part 904.

Subpart G—Appeals Regarding Licensing Decisions

§ 960.27 Grounds for adjudication by the Secretary.

(a) In accordance with the procedures in this subpart, a person may appeal the following adverse actions for adjudication by the Secretary:

(1) The denial of a license;

(2) The Secretary's failure to make a determination on a license grant or denial within the timelines provided in this part;

(3) The imposition of a license condition; and

(4) The denial of a requested license modification.

(b) The only acceptable grounds for appeal of the above actions are as follows:

(1) The Secretary's action was arbitrary, capricious, or contrary to law; or

(2) The action was based on a clear factual error.

(c) No appeal is available to the extent that there is involved the conduct of military or foreign affairs functions.

§ 960.28 Administrative appeal procedures.

(a) A person wishing to appeal an action specified at § 960.27(a) may do so within 14 days of the action by submitting a written request to the Secretary.

(b) The request must include a detailed explanation of the reasons for the appeal, including any claims of factual or legal error.

(c) Upon receipt of a request under paragraph (a) of this section, the Secretary shall review the request to certify that it meets the requirements of this subpart and chapter 7 of title 5 of the United States Code. If it does, the Secretary shall coordinate with the appellant to schedule a hearing before a hearing officer designated by the Secretary. If the Secretary does not certify the request, the Secretary shall notify the person in writing that no appeal is available, and this notification shall constitute a final agency action.

(d) The hearing shall be held in a timely manner. It shall provide the appellant and the Secretary an opportunity to present evidence and arguments.

(e) Hearings may be closed to the public, and other actions taken as the Secretary deems necessary, to prevent the disclosure of any information required by law to be protected from disclosure.

(f) At the close of the hearing, the hearing officer shall recommend a decision to the Secretary addressing all factual and legal arguments.

(g) Based on the record of the hearing and the recommendation of the hearing officer, the Secretary shall make a decision adopting, rejecting, or modifying the recommendation of the hearing officer. This decision constitutes a final agency action, and is subject to judicial review under chapter 7 of title 5 of the United States Code.

Appendix A to Part 960—Application Information Required

To apply for a license to operate a remote sensing space system under 51 U.S.C. 60101 *et seq.* and 15 CFR part 960, you must provide:

1. Material Facts: Fully accurate and responsive information to the following prompts under ''Description of Licensee'' and ''Description of System.'' If a question is not applicable, write ''N/A'' and explain, if necessary; and

2. Orbital Debris Mitigation Standard Practices (ODMSP) Plan: A document that explains how you will comply with the latest version of the ODMSP issued by the U.S. Government.

3. Your response to each prompt below constitutes material facts. If any information you submit later becomes inaccurate or incomplete before a license grant or denial, you must promptly contact the Secretary and submit correct and updated information as instructed by the Secretary. Please see 15 CFR part 960 subpart C for additional details.

Description of Licensee

1. General Licensee Information

a. Name:

b. Location and address of applicant:

c. Applicant contact information (for example, general corporate or university contact information):

d. Contact information for a specific individual to serve as the point of contact with Commerce:

e. Place of incorporation, if outside the United States:

2. Ownership interests

a. Domestic entities or individuals with an ownership interest in the Licensee totaling more than 50 percent:

b. Foreign entities or individuals with any ownership interest in the Licensee:

3. Identity of any subsidiaries and affiliates playing a role in the operation of the System, including a brief description of that role:

4. Any foreign nations who may license the system:

Description of System

1. General System Information

a. Name of system:

b. Brief mission description:

2. Remote Sensing Instrument(s):

a. Type(s) of sensor(s), including the spectral range(s) in nanometers in which the sensor is capable of operating (*i.e.,* 370–800; Optical, Radar, Lidar, X-Ray, Multispectral, Hyperspectral, combination of these, Other):

b. Spectral bandwidth capability or capabilities in nanometers (*i.e.,* 400 nanometer-wide band; four 20-nanometer-wide bands; etc.):

c. If sensor is multispectral, number of spectral bands:

d. Spatial resolution (GSD, Impulse Response, Other):

e. Number of sensors per satellite:

f. Whether the mission profile involves performing night-time imaging, defined as imaging an area of the Earth's surface when the sun's elevation is six degrees or more below the Earth's horizon relative to the imaged area with a resolution finer than 30 meters GSD:

g. Whether the mission profile involves performing non-Earth imaging, defined as conducting remote sensing of an artificial object in space:

h. Whether the system is capable of capturing video, defined as either:

A. Imaging at least one frame every 10 seconds if the remote sensing instrument's resolution is finer than 30 meters GSD; or

B. Imaging at least 30 frames per second if the remote sensing instrument's resolution is coarser than or equal to 30 meters GSD.

i. Minimum time between capability of imaging the same center point of an image on Earth more than once, from one or more satellites in a constellation:

j. Minimum and average time between when data are collected and disseminated to the public:

k. If any entity or individual other than the Licensee will own or control any remote sensing instrument in the System:

A. Identity and contact information of that entity or individual:

B. Relationship to Licensee (*i.e.,* operating under Licensee's instructions under a contract):

3. Spacecraft Upon Which the Remote Sensing Instrument(s) is (are) Carried

a. Description

A. Estimated launch date(s) in calendar quarter:

B. Number of spacecraft (system total and maximum in-orbit at one time):

b. Altitude range in kilometers:

c. Inclination range in degrees:

d. Propulsion (yes/no):

e. If any entity or individual other than the Licensee will own, control, or manage any spacecraft in the System:

A. Identity and contact information of that entity or individual:

B. Whether that entity or individual is a U.S. citizen:

C. Relationship to Licensee (*i.e.,* operating under Licensee's instructions under a contract):

4. Ground Components

a. Location of Mission Control Center(s):

b. Location of Ground Stations (without transmission access), wherever located:

c. Location of Ground Access Facilities (with direct downlink or transmission access), wherever located:

d. Data Storage and Archive Locations (including description and physical location of physical servers, cloud storage, etc.):

e. Description of encryption for telemetry tracking and control and data transmissions, if any (noting the applicable data protection standard license conditions for low- and high-risk systems):

f. If any entity or individual other than the Licensee will own, control, or manage any ground components of the System:

A. Identity and contact information of that entity or individual:

B. Whether that entity or individual is a U.S. citizen:

C. Relationship to Licensee (*i.e.,* operating under Licensee's instructions under a contract):

Requests for Standard License Condition Waivers or Adjustments

Standard license conditions are listed at 15 CFR 960.13 and 960.20 for low- and high-risk systems, respectively. If requesting that any of these be waived or adjusted, please identify the specific standard license condition and explain why:

1. The requirement is not applicable due to the nature of the applicant or the proposed system;

2. The applicant will achieve the goal in a different way; or

3. There is other good cause to waive or adjust the condition.

Appendix B to Part 960—Application Submission Instructions

A person may apply to operate a private remote sensing space system by submitting the information to the Secretary as described in Appendix A of this part. This information can be submitted in one of three ways:

1. Complete the fillable form at *www.nesdis.noaa.gov/crsra.*

2. Respond to the prompts in Appendix A of this part and email your responses to *crsra@noaa.gov.*

3. Respond to the prompts in Appendix A of this part and mail your responses to: Commercial Remote Sensing Regulatory Affairs, 1335 East-West Highway SSMC–1/G–101, Silver Spring, MD 20910.

Appendix C to Part 960—License Template

Part A: Determination and License Grant

1. The Secretary determines that [licensee name], as described in Part C, will comply with the requirements of the Act, the regulations at 15 CFR part 960, and the conditions in this license.

2. Accordingly, the Secretary hereby grants [licensee name] (hereinafter ''Licensee''), as described in Part C, this license to operate [system name] (hereinafter ''the System''), as described in Part D, subject to the terms and conditions of this license. This license is valid until its term ends, in accordance with 15 CFR [960.16 or 960.24]. The Licensee must request and receive approval for a license modification before taking any action that would contradict a material fact listed in Part C or D of this license.

3. The Secretary makes this determination, and grants this license, under the Secretary's authority in 51 U.S.C. 60123 and regulations at 15 CFR part 960. This license does not authorize the System's use of spectrum for radio communications or the conduct of any non-remote sensing operations that are proposed to be undertaken by the Licensee. This license is not alienable and creates no property right in the Licensee.

Part B: License Conditions

The Licensee must, at all times:

[Depending upon the categorization of the application as low- or high-risk, Commerce will insert the applicable standard license conditions, found either at §§ 960.13 or 960.20, and for a high-risk application, any applicable specific conditions resulting from the process in § 960.18, here.]

Part C: Description of Licensee

Every term below constitutes a material fact. You must request and receive approval of a license modification before taking any action that would contradict a material fact.

1. General Licensee Information
a. Name:
b. Location and address of licensee:
c. Licensee contact information (for example, general corporate or university contact information):
d. Contact information for a specific individual to serve as the point of contact with Commerce:
e. Place of incorporation, if outside the United States:
2. Ownership Interests
a. Domestic entities or individuals with an ownership interest in the Licensee totaling more than 50 percent:
b. Foreign entities or individuals with any ownership interest in the Licensee:
3. Identity of any subsidiaries and affiliates playing a role in the operation of the System, including a brief description of that role:
4. Point of contact for limited operations directives, if other than the point of contact listed above [note: do not include in low-risk licenses]:
5. Any foreign nations who may license the system:

Part D: Description of System

Every term below constitutes a material fact. You must request and receive approval of a license modification before taking any action that would contradict a material fact.
1. General System Information
a. Name of system:
b. Brief mission description:
2. Remote Sensing Instrument(s):
a. Type(s) of sensor(s), including the spectral range(s) in nanometers in which the sensor is capable of operating (*i.e.,* 370–800; Optical, Radar, Lidar, X-Ray, Hyperspectral, Video, combination of these, other):
b. Spectral bandwidth capability or capabilities in nanometers:
c. If sensor is multispectral, number of spectral bands:
d. Spatial resolution (GSD, Impulse Response, Other):
e. Number of sensors per satellite:
f. Whether the mission profile involves performing night-time imaging, defined as imaging an area of the Earth's surface when the sun's elevation is six degrees or more below the Earth's horizon relative to the imaged area with a resolution finer than 30 meters GSD:
g. Whether the mission profile involves performing non-Earth imaging, defined as conducting remote sensing of an artificial object in space:
h. Whether the system is capable of capturing video, defined as either:
A. Imaging at least one frame every 10 seconds if the remote sensing instrument's resolution is finer than 30 meters GSD; or
B. Imaging at least 30 frames per second if the remote sensing instrument's resolution is coarser than or equal to 30 meters GSD:
i. Minimum time between capability of imaging the same center point of an image on Earth more than once, from one or more satellites in a constellation:
j. Minimum and average time between when data are collected and disseminated to the public:
k. If any entity or individual other than the Licensee will own or control any remote sensing instrument in the System:
A. Identity and contact information of that entity or individual:
B. Relationship to Licensee (*i.e.,* operating under Licensee's instructions under a contract):
3. Spacecraft Upon Which Remote Sensing Instrument(s) is (are) Carried
a. Description
A. Estimated launch date(s) in calendar quarter:
B. Number of spacecraft (system total and maximum in-orbit at one time):
b. Altitude range in kilometers:
c. Inclination range in degrees:
d. Propulsion (yes/no):
e. If any entity or individual other than the Licensee will own or control any spacecraft in the System:
A. Identity and contact information of that entity or individual:
B. Whether that entity or individual is a U.S. citizen:
C. Relationship to Licensee (*i.e.,* operating under Licensee's instructions under a contract):
4. Ground Components
a. Location of Mission Control Center(s):
b. Location of Ground Stations (without transmission access), wherever located:
c. Location of Ground Access Facilities (with direct downlink or transmission access), wherever located:
d. Data Storage and Archive Locations (including description and physical location of physical servers, cloud storage, *etc.*):
e. Description of encryption for telemetry tracking and control and data transmissions, if any (noting the applicable data protection standard license conditions for low- and high-risk systems):
f. If any entity or individual other than the Licensee will own or control any ground components of the System:
A. Identity and contact information of that entity or individual:
B. Whether that entity or individual is a U.S. citizen:
C. Relationship to Licensee (*i.e.,* operating under Licensee's instructions under a contract):

Appendix D to Part 960—Memorandum of Understanding

Memorandum of Understanding Among the Departments of Commerce, State, Defense, and Interior, and the Office of the Director of National Intelligence, Concerning the Licensing and Operations of Private Remote Sensing Satellite Systems. April 25, 2017.

I. Authorities and Roles

This Memorandum of Understanding (MOU) is undertaken pursuant to the National and Commercial Space Programs Act, 51 U.S.C, 60101 *et seq.* (''the Act''), 15 CFR part 960, National Security Presidential Directive 27 (NSPD–27), and Presidential Policy Directive-4 PPD–4) (''applicable directives''), or to any renewal of, or successor to, the Act and the applicable directives.

The principal Parties to this MOU are the Department of Commerce (DOC), Department of State (DOS), Department of Defense (DOD), and Department of the Interior (DOI). The Office of the Director of National Intelligence (ODNI) and the Joint Chiefs of Staff (JCS) provide supporting advice pertaining to their areas of expertise. The Secretary of commerce is responsible for administering the licensing of private remote sensing satellite systems pursuant to the Act and applicable directives, and fulfills this responsibility through the National Oceanic and Atmospheric Administration (NOAA). For remote sensing issues, the Act also grants the authority to the Secretary of State to determine conditions necessary to meet international obligations and foreign policies, and to the Secretary of Defense to determine conditions necessary to meet the national security concerns raised by any remote sensing license application submitted pursuant to the Act and applicable directives, or to any amendment, renewal, or successor thereto. In addition, pursuant to this MOU, NOAA shall also consult with the Director of National Intelligence (DNI) for the views of the Intelligence Community (IC) and with the Chairman of the Joint Chiefs of Staff for the views of the DOD joint operational community.

II. Purpose

The purpose of this MOU is to establish the interagency consultation process for adjudicating remote sensing licensing actions, and the consultation process for the interruption of normal commercial operations pursuant to the Act and applicable directives.

III. Policy

In consultation with affected departments and agencies, including the DNI and JCS, the Secretary of commerce will impose constraints on private remote sensing systems when necessary to meet the international obligations, foreign policy concerns, and/or national security concerns of the United States, and shall accord with the determinations of the Secretary of State and the Secretary of Defense, and with applicable laws and directives. Procedures for implementing this policy are established below, with each Party to this MOU separately establishing and documenting its internal timelines and decision authorities below the Cabinet level.

IV. Procedures for Department/Agency Review

A. Consultation During Review of Licensing Actions

Pursuant to the Act and applicable directives, or to any renewal thereof or successor thereto, the Secretary of Commerce shall review any application and make a determination within 120 days of receipt of such application. If final action has not occurred within such time, then the Secretary shall inform the applicant of any pending issues and of actions required to resolve them. The DOC will provide copies of requests for licensing actions to DOS, DOD, DOI, ODNl, and JCS within 3 working days. Each of these entities will inform DOC, through NOAA, of the office of primary responsibility, including primary and backup points of contact, for license action coordination.

(1) DOC will defer its decision on licensing requests until the other reviewing agencies

have had a reasonable time to review them, as provided in this section. Within 10 working days of receipt, if DOS, DOD, DOI, ODNI, or JCS wants more information or time to review, then it shall notify, in writing, DOC/NOAA (a) of any additional information that it believes is necessary to properly evaluate the licensing action, or (b) of the additional time, not to exceed 10 working days, necessary to complete the review. This notification shall state the specific reasons why the additional information is sought, or why more time is needed.

(2) After receiving a complete license package, including any additional information that was requested as described above, DOS, DOD, DOI, ODNI and JCS will provide their final recommendations on the license package within 30 days, or otherwise may request from DOC/NOAA additional time necessary to provide a recommendation. If DOS determines that imposition of conditions on the actions being reviewed is necessary to meet the international obligations and foreign policies of the United States, or DOD determines that imposition of conditions are necessary to address the national security concerns of the United States, the MOU Party identifying the concern will promptly notify, in writing, DOC/NOAA and those departments and agencies responsible for the management of operational land imaging space capabilities of the United States. Such notification shall: (a) Describe the specific national security interests, or the specific international obligations or foreign policies at risk, if the applicant's system is approved as proposed; (b) set forth the specific basis for the conclusion that operation of the applicant's system as proposed will not preserve the identified national security interests or the identified international obligations or foreign policies; and (c) either specify the additional conditions that will be necessary to preserve the relevant U.S. interests, or set forth in detail why denial is required to preserve such interests. All notifications under this paragraph must be in writing.

B. Interagency Dispute Resolution for Licensing Actions

(1) Committees. The following committees are established, described here from the lowest level to the highest, to adjudicate disagreements concerning proposed commercial remote sensing system licenses.

(a) Operating Committee on Private Remote Sensing Space Systems. An Operating Committee on Private Remote Sensing Space Systems (RSOC) is established. The Under Secretary of Commerce for Oceans and Atmosphere and NOAA Administrator shall appoint its Chair. Its other principal members shall be representatives of DOS, DOD, and DOI, or their subordinate agencies, who along with their subject matter experts, can speak on behalf of their department or agency. Representatives of the ODNI and the JCS shall participate as supporting members to provide independent advice pertaining to their areas of expertise. The RSOC may invite representatives of United States Government departments or agencies that are not normally represented in the RSOC to participate in the activities of that Committee when matters of interest to such departments or agencies are under consideration.

(b) Advisory Committee on Private Remote Sensing Space Systems. An Advisory Committee on Private Remote Sensing Space Systems (ACPRS) is established and shall have as its principal members the Assistant Secretary of Commerce for Environmental Observation and Prediction, who shall be Chair of the Committee, and Assistant Secretary representatives of DOS, DOD, and DOI. Appointed representatives of ODNI and JCS shall participate as supporting members to provide independent advice pertaining to their areas of expertise. Regardless of the department or agency representative's rank and position, such representative shall speak at the ACPRS on behalf of his/her department or agency. The ACPRS may invite Assistant Secretary level representation of United States Government departments or agencies that are not represented in the ACPRS to participate in the activities of that Committee when matters of interest to such departments or agencies are under consideration.

(c) Review Board for Private Remote Sensing Space Systems. The Board shall have, as its principal members, the Under Secretary of commerce for Oceans and Atmosphere, who shall be Chair of the Board, and Under Secretary or equivalent representatives of DOS, DOD, and DOI. The Director of National Intelligence and Chairman of the Joint Chiefs of Staff shall be represented at an appropriate level as supporting members to provide independent advice pertaining to their areas of expertise. The Board may invite the representatives of United States Government departments or agencies that are not represented on the Board, to participate in the activities of the Board when matters of interest to such departments or agencies are under consideration.

(2) Resolution Procedures.

(a) If, following the various intra-departmental review processes, the principal members of the RSOC do not agree on approving a license or on necessary conditions that would allow for its approval, then the RSOC shall meet to review the license application. The RSOC shall work to resolve differences in the recommendations with the goal of approving licenses with the least restrictive conditions needed to meet the international obligations, foreign policies, or national security concerns of the United States. If the issues cannot be resolved, then the Chair of the RSOC shall prepare a proposed license that reflects the Committee's views as closely as possible, and provide it to the principal members of the RSOC for approval. The proposed license prepared by the RSOC chair shall contain the conditions determined necessary by DOS or DOD. Principal members have 5 working days to object to the proposed license and seek a decision at a higher level. In the absence of a timely escalation, the license proposed by the RSOC Chair will be issued.

(b) If any of the principal Parties disagrees with the proposed license provided by the RSOC Chair, they may escalate the matter to the ACPRS for resolution, Principal Parties must escalate the matter within 5 working days of such a decision. Escalations must be in writing from the principal ACPRS member, and must cite the specific national security, foreign policy, or international obligation concern. Upon receipt of a request to escalate, DOC will suspend any further action on the license action until ACPRS resolution. The ACPRS shall meet to review all departments' information and recommendations, and shall work to resolve interagency disagreements. Following this meeting, the Chair of the ACPRS shall, within 11 working days from the date of receiving notice of escalation, provide the reviewing departments a proposed license that contains the conditions determined by DOS or DOD. Within 5 working days of receipt of the proposed license, an ACPRS principal member may object to the prepared license and seek to escalate the matter to the Review Board. In the absence of an escalation within 5 working days, the license prepared by the ACPRS Chair will be issued.

(c) If any of the principal Parties disagrees with the license prepared by the ACPRS Chair, it may escalate the matter to the Review Board for resolution. Principal Parties must escalate the matter within 5 working days of such a decision. Escalations must be in writing from the principal Review Board member, and must cite the specific national security, foreign policy, or international obligation concern. Upon receipt of a request to escalate, DOC will suspend any further action on the license action until Review Board resolution. The Review Board shall meet to review information and recommendations that are provided by the ACPRS, and such other private remote sensing matters as appropriate. The Chair of the Board shall provide reviewing departments and agencies a proposed license within 11 working days from the date of receiving notice of escalation. The proposed license prepared by the Review Board chair shall contain the conditions determined necessary by DOS or DOD. If no principal Parties object to the proposed license within 5 working days, it will be issued.

(d) If, within 5 working days of receipt of the draft license, a principal Party disagrees with any conditions imposed on the license, that Party's Secretary will promptly notify the Secretary of Commerce and the other principal Parties in writing of such disagreement and the reasons therefor, and a copy will be provided to the Assistant to the President for National Security Affairs and the Assistant to the President for Science and Technology.

(e) Upon notification of such a disagreement, DOC will suspend further action on the license that would be inconsistent with the Secretary of State or the Secretary of Defense determination. If the Secretary of commerce believes the limits defined by another Secretary are inappropriate, then the Secretary of Commerce or Deputy Secretary shall consult with his or her counterpart in the relevant department within 10 working days regarding unresolved issues. If the relevant Secretaries are unable to resolve any issues, the Secretary of Commerce will notify the Assistant to the President for National Security Affairs, who, in coordination with

the Assistant to the President for Science and Technology, will seek to achieve consensus among departments and agencies, or filing that, by referral to the President. All efforts will be taken to resolve the dispute within 3 weeks of its submission to the Assistant to the President for National Security Affairs and the Assistant to the President for Science and Technology.

C. Interagency Dispute Resolution Concerning Other Commercial Remote Sensing Matters

Nothing in this MOU precludes any Party to this MOU from addressing through other appropriate channels, consistent with the Act and applicable directives, any matter regarding commercial remote sensing unrelated to (1) adjudicating remote sensing licensing actions, or (2) the interruption of normal commercial operations. Such matters may be raised using standard coordination processes, including by referral to the Assistant to the President for National Security Affairs, who, in coordination with the Assistant to the President for Science and Technology, will seek to achieve consensus among the departments and agencies, or filing that, by referral to the President, when appropriate.

D. Consultation During Review of Interruption of Normal Commercial Operations

(1) This section establishes the process to limit the licensee's data collection and/or distribution where necessary to meet international obligations or foreign policy interests, as determined by the Secretary of State, or during periods of increased concern for national security, as determined by the Secretary of Defense in consultation with the Director of National Intelligence and the Chairman of the Joint Chiefs of Staff. DOC will provide DOS, DOD, ODNI, and JCS copies of licensee correspondence and documents that describe how the licensee will comply with such interruptions of its commercial operations.

(2) Conditions should be imposed for the smallest area and for the shortest period necessary to protect the international obligations and foreign policies or national security concerns at issue. Alternatives to prohibitions on collection and/or distribution shall be considered as ''modified operations,'' such as delaying or restricting the transmission or distribution of data, restricting disseminated data quality, restricting the field of view of the system, obfuscation, encryption of the data, or other means to control the use of the data, provided the licensee has provisions to implement such measures.

(3) Except where urgency precludes it, DOS, DOD, DOC, ODNI and JCS will consult to attempt to come to an agreement concerning appropriate conditions to be imposed on the licensee in accordance with determinations made by DOS or DOD. Consultations shall be managed so that, in the event an agreement cannot be reached at the staff level, sufficient time will remain to allow the Secretary of Commerce to consult personally with the Secretary of State, the Secretary of Defense, the Director of National Intelligence, or the Chairman of the Joint Chiefs of Staff as appropriate, prior to the issuance of a determination by the Secretary of State, or the Secretary of Defense, in accordance with (4) below. That function shall not be delegated below the Secretary or acting Secretary.

(4) After such consultations, or when the Secretary of State or the Secretary of Defense, specifically determines that urgency precludes consultation with the Secretary of Commerce, the Secretary of State shall determine the conditions necessary to meet international obligations and foreign policy concerns, and the Secretary of Defense shall determine the conditions necessary to meet national security concerns. This function shall not be delegated below the Secretary or acting Secretary.

(5) The Secretary of State or the Secretary of Defense will provide to the Secretary of Commerce a determination regarding the conditions required to be imposed on the licensees. The determination will describe the international obligations, specific foreign policy, or national security interest at risk. Upon receipt of the determination, DOC shall immediately notify the licensees of the imposition of limiting conditions on commercial operations. Copies of the determination and any implementing DOC action will be provided promptly to the Assistant to the President for National Security Affairs and the Assistant to the President for Science and Technology.

(6) If the Secretary of Commerce believes the conditions determined by another Secretary are inappropriate, he or she will, simultaneous with notification to, and imposition of such conditions on, the licensee, so notify the Secretary of State or the Secretary of Defense, the Assistant to the President for National Security Affairs, and the Assistant to the President for Science and Technology. The Assistant to the President for National Security Affairs, in coordination with the Assistant to the President for Science and Technology, may initiate as soon as possible a Principals-level consultative process to achieve a consensus or, failing that, refer the matter the President for decision. All efforts will be taken to resolve the disagreement within 7 working days of its submission to the Assistant to the President for National Security Affairs and the Assistant to the President for Science and Technology.

E. Coordination Before Release of Information Provided or Generated by Other United States Government Departments or Agencies

Before releasing any information provided or generated by another department or agency to a licensee or potential licensee, to the public, or to an administrative law judge, the agency proposing the release must consult with the agency that provided or generated the information. The purpose of such consultations will be to review the propriety of any proposed release of information that may be privileged or restricted because it is classified, pre-decisional, deliberative, proprietary, or protected for other reasons. No information shall be released without the approval of the department or agency that provided or generated it unless required by law.

F. No Legal Rights

No legal rights or remedies, or legally enforceable causes of action, are created or intended to be created by this MOU.

[FR Doc. 2019–09320 Filed 5–13–19; 8:45 am]

BILLING CODE 3510–HR–P

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Parts 548 and 778

RIN 1235–AA24

Regular Rate Under the Fair Labor Standards Act

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document extends the period for submitting written comments on the Notice of Proposed Rulemaking (NPRM) entitled ''Regular Rate Under the Fair Labor Standards Act.'' The comment period now ends on June 12, 2019. The Department of Labor (Department) is taking this action to provide interested parties additional time to submit comments in response to requests for extension.

DATES: The comment period for the proposed rule published March 29, 2019, at 84 FR 11888, is extended. The period for public comments, which was set to close on May 28, 2019, is extended to June 12, 2019. Comments must be received by 11:59 p.m. on June 12, 2019.

ADDRESSES: To facilitate the receipt and processing of written comments on this NPRM, the Department encourages interested persons to submit their comments electronically. You may submit comments, identified by Regulatory Information Number (RIN) 1235–AA24, by either one of the following methods:

Electronic comments: Follow the instructions for submitting comments on the Federal eRulemaking Portal *http://www.regulations.gov.*

Mail: Address written submissions to Amy DeBisschop, Acting Director of the Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210.

Instructions: This NPRM is available through the **Federal Register** and the *http://www.regulations.gov* website. You may also access this document via

the Wage and Hour Division's (WHD) website at *http://www.dol.gov/whd/.* All comment submissions must include the agency name (Wage and Hour Division) and Regulatory Information Number (1235–AA24) for this NPRM. Response to this NPRM is voluntary. The Department requests that no business proprietary information, copyrighted information, or personally identifiable information be submitted in response to this NPRM. Submit only one copy of your comment by only one method (*e.g.,* persons submitting comments electronically are encouraged not to submit paper copies). Please be advised that comments received will become a matter of public record and will be posted without change to *http://www.regulations.gov,* including any personal information provided. All comments must be received by 11:59 p.m. on the date indicated for consideration in this NPRM; comments received after the comment period closes will not be considered. Commenters should transmit comments early to ensure timely receipt prior to the close of the comment period. Electronic submission via *http://www.regulations.gov* enables prompt receipt of comments submitted as the Department continues to experience delays in the receipt of mail in our area. For access to the docket to read background documents or comments, go to the Federal eRulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Amy DeBisschop, Acting Director of the Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of the NPRM may be obtained in alternative formats (Large Print, Braille, Audio Tape, or Disc) upon request by calling (202) 693–0675 (this is not a toll-free number). TTY/TDD callers may dial toll-free 1 (877) 889–5627 to obtain information or request materials in alternative formats.

Questions of interpretation and/or enforcement of the agency's regulations may be directed to the nearest WHD district office. Locate the nearest office by calling WHD's toll-free help line at (866) 4US–WAGE ((866) 487–9243) between 8 a.m. and 5 p.m. in your local time zone, or log onto WHD's website at *http://www.dol.gov/whd/america2.htm* for a nationwide listing of WHD district and area offices.

SUPPLEMENTARY INFORMATION: On March 29, 2019, the Department published an NPRM and request for comments in the **Federal Register** (84 FR 11888), proposing to update the regulations to provide clarity and better reflect the 21st-century workplace. The NPRM also requested public comments on the NPRM on or before May 28, 2019. In response to requests for extension of the comment period from commenters the Department has extended the period for submitting public comment to June 12, 2019.

The Department has received requests to extend the period for filing public comments from law firms, unions, and advocacy organizations, among others. Because of the interest that has been expressed in this matter, the Department has decided to provide an extension of the period for submitting public comment until June 12, 2019.

Cheryl M. Stanton,

Administrator, Wage and Hour Division.

[FR Doc. 2019–09842 Filed 5–13–19; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 791

RIN 1235–AA26

Joint Employer Status Under the Fair Labor Standards Act

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document extends the period for submitting written comments on the Notice of Proposed Rulemaking (NPRM) entitled ''Joint Employer Status Under the Fair Labor Standards Act.'' The comment period now ends on June 25, 2019. The Department of Labor (Department) is taking this action to provide interested parties additional time to submit comments in response to requests for extension.

DATES: The comment period for the proposed rule published April 9, 2019, at 84 FR 14043, is extended. The period for public comments, which was set to close on June 10, 2019, will be extended to June 25, 2019. Comments must be received by 11:59 p.m. on June 25, 2019.

ADDRESSES: To facilitate the receipt and processing of written comments on this NPRM, the Department encourages interested persons to submit their comments electronically. You may submit comments, identified by Regulatory Information Number (RIN) 1235–AA26, by either one of the following methods:

Electronic comments: Follow the instructions for submitting comments on the Federal eRulemaking Portal *http://www.regulations.gov.*

Mail: Address written submissions to Amy DeBisschop, Acting Director of the Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210.

Instructions: This NPRM is available through the **Federal Register** and the *http://www.regulations.gov* website. You may also access this document via the Wage and Hour Division's (WHD) website at *http://www.dol.gov/whd/.* All comment submissions must include the agency name (Wage and Hour Division) and Regulatory Information Number (1235–AA26) for this NPRM. Response to this NPRM is voluntary. The Department requests that no business proprietary information, copyrighted information, or personally identifiable information be submitted in response to this NPRM. Submit only one copy of your comment by only one method (*e.g.,* persons submitting comments electronically are encouraged not to submit paper copies). Please be advised that comments received will become a matter of public record and will be posted without change to *http://www.regulations.gov,* including any personal information provided. All comments must be received by 11:59 p.m. on the date indicated for consideration in this NPRM; comments received after the comment period closes will not be considered. Commenters should transmit comments early to ensure timely receipt prior to the close of the comment period. Electronic submission via *http://www.regulations.gov* enables prompt receipt of comments submitted as the Department continues to experience delays in the receipt of mail in our area. For access to the docket to read background documents or comments, go to the Federal eRulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Amy DeBisschop, Acting Director of the Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of the NPRM may be obtained in alternative formats (Large Print, Braille, Audio Tape, or Disc) upon request by calling (202) 693–0675 (this is not a toll-free number). TTY/TDD callers may dial toll-free 1 (877) 889–

5627 to obtain information or request materials in alternative formats.

Questions of interpretation and/or enforcement of the agency's regulations may be directed to the nearest WHD district office. Locate the nearest office by calling WHD's toll-free help line at (866) 4US–WAGE ((866) 487–9243) between 8 a.m. and 5 p.m. in your local time zone, or log onto WHD's website at *http://www.dol.gov/whd/america2.htm* for a nationwide listing of WHD district and area offices.

SUPPLEMENTARY INFORMATION: On April 9, 2019, the Department published an NPRM and request for comments in the **Federal Register** (84 FR 14043), proposing to update and clarify the Department's interpretation of joint employer status under the Fair Labor Standards Act. The NPRM also requested public comments on the NPRM on or before June 10, 2019.

The Department has received requests to extend the period for filing public comments from law firms, unions, and advocacy organizations, among others. Because of the interest that has been expressed in this matter, the Department has decided to provide an extension of the period for submitting public comment until June 25, 2019.

Cheryl M. Stanton,

Administrator, Wage and Hour Division.

[FR Doc. 2019–09841 Filed 5–13–19; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0301]

RIN 1625–AA00

Safety Zone; Ohio River, Owensboro, KY

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary safety zone for all navigable waters of the Ohio River, extending the entire width of the river, from mile marker (MM) 756.3 to MM 757.3. This action is necessary to provide for the safety of life on these navigable waters near Owensboro, Kentucky, during the Owensboro Convention Center fireworks display on June 15, 2019. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Ohio Valley 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 May 29, 2019.

ADDRESSES: You may submit comments identified by docket number USCG–2019–0301 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 MST2 Craig Colton, Sector Ohio Valley, U.S. Coast Guard; telephone 502–779–5334, email *secohv-wwm@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Sector Ohio Valley
DHS Department of Homeland Security
FR Federal Register
MM Mile Marker
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

On April 1, 2019, the City of Owensboro notified the Coast Guard that it will be conducting a fireworks display from 10 p.m. to 10:30 p.m. on June 15, 2019, for a private event at the Owensboro Convention Center. The fireworks are to be launched from a barge in the Ohio River at approximately mile marker 756.8. Hazards from firework displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The Captain of the Port Sector Ohio Valley (COTP) has determined that a Safety Zone is necessary to protect the public from potential hazards associated with the fireworks display.

The purpose of this rulemaking is to ensure the safety of persons, vessels, and the marine environment on the navigable waters of the Ohio River before, during, and after the Owensboro Convention Center Fireworks Display. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

The Coast Guard encourages the public to participate in this proposed rulemaking through the comment process so that any necessary changes can be identified and implemented in a timely and efficient manner. The Coast Guard will address all public comments accordingly, whether through response, additional revision to the regulation, or otherwise.

The Coast Guard is issuing this notice of proposed rulemaking (NPRM) with a 15-day prior notice and opportunity to comment pursuant to section (b)(3) of the Administrative Procedure Act (APA) (5 U.S.C. 553). This provision authorizes an agency to publish a rule in less than 30 days before its effective date for ''good cause found and published with the rule.'' Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for publishing this NPRM with a 15-day comment period because it is impractical to provide a 30-day comment period. The proposed regulated area is necessary to ensure the safety of vessels and persons during the fireworks display. It is impracticable to publish an NPRM with a 30-day comment period because the safety zone must be established by June 15, 2019.

III. Discussion of Proposed Rule

The COTP is proposing to establish a safety zone from mile marker (MM) 756.3 to MM 757.3 from 9 p.m. to 11 p.m. on June 15, 2019. The safety zone would cover all navigable waters of the Ohio River, extending the entire width of the river, between MM 756.3 and MM 757.3 in Owensboro, KY. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 10 p.m. to 10:30 p.m. fireworks display. 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, and time-of-day of the safety zone. This proposed safety zone restricts transit on a one-mile stretch of the Ohio River for two hours on one day. Moreover, the Coast Guard would issue Broadcast Notices to Mariners, Local Notices to Mariners, and Marine Safety Information Bulletins about this safety zone so that waterway users may plan accordingly for this short restriction on transit, and the rule would allow vessels to request permission to enter the regulated area.

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

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this 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 Commandant Instruction M16475.1D, 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 2 hours that would prohibit entry to a one-mile stretch of the Ohio River on one day. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. 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 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.

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,* contact 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 the docket, visit *https://www.regulations.gov/privacyNotice.*

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up

for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and Recordkeeping Requirements, Security Measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T08–0301 to read as follows:

§ 165.T08–0301 Safety zone; Ohio River, Owensboro, KY.

(a) *Location.* All navigable waters of the Ohio River between mile markers (MM) 756.3 to MM 757.3 in Owensboro, KY.

(b) *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.

(2) To seek permission to enter, contact the COTP or the COTP's representative by VHF–FM radio channel 16 or phone at 1–800–253–7465. 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.

(c) *Enforcement period.* This temporary safety zone will be enforced from 9 p.m. to 11 p.m. June 15, 2019.

Dated: May 8, 2019.

M.B. Zamperini,

Captain, U.S. Coast Guard, Captain of the Port Sector Ohio Valley.

[FR Doc. 2019–09852 Filed 5–13–19; 8:45 am]

BILLING CODE 9110–04–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket No. RM2019–3; Order No. 5088]

Mail Classification Schedule

AGENCY: Postal Regulatory Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is proposing an amendment to its rules involving the information the Postal Service must provide when updating the size and weight limitations applicable to market dominant mail matter. The Commission invites public comment on the proposed revisions.

DATES: *Comments are due:* June 13, 2019.

ADDRESSES: For additional information, Order No. 5088 can be accessed electronically through the Commission's website at *https://www.prc.gov.* Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

The Commission initiated this proceeding to explore updating its regulations to address proposed classification changes to product descriptions in the Mail Classification Schedule (MCS) that may modify the market dominant and/or competitive product lists. The Commission sought comments from interested parties on whether it should update its regulations to require information pursuant to section 3642 when changes to the size and weight limitations appear to modify the product lists.

II. Basis and Purpose of Proposed Rules

Currently, § 3020.111(a) requires the Postal Service to file a notice with the Commission 45 days prior to the effective date of the proposed update to size and weight limitations for market dominant mail matter. The notice must include a copy of the applicable sections of the MCS and the proposed updates therein in legislative format. 39 CFR 3020.111(a). The Commission evaluates the proposals in accordance with the policies and the applicable criteria of chapter 36 of title 39 of the United States Code. 39 CFR 3020.111(c). To assist the Commission in its review, the Postal Service has explained in previous notices how the proposed update is in accordance with the policies and applicable criteria of chapter 36 of title 39 of the United States Code.[1]

The Commission instituted this proceeding to evaluate whether this information is sufficient to address instances where a proposed update to size and weight limitations appears to modify the product lists without proper Commission oversight. In particular, the Commission is concerned with changes that may camouflage an unreasonable price increase, materially harm users or competitors, or otherwise constitute an abuse of market power. Accordingly, the Commission proposes that § 3020.111(a) be amended to include the requirement that the Postal Service explain if a proposed update to a size or weight limitation will adversely affect users and competitors. The Commission also proposes to add a requirement that the Postal Service explain how a size and weight limitation change is in accordance with the policies and applicable criteria of chapter 36 of title 39 of the United States Code, as consistent with the Postal Service's current practice.

The proposed amendment would not be overly burdensome to the Postal Service, as it does not require the information necessary for a section 3642 review, such as establishing a lack of market power over the volume of mail that would be affected by the change. In practice, the Postal Service already explains how a size and weight limitation change complies with the statutes and rules. The requirement to explain the potential effects of the change on users and competitors in its notice is consistent with the requirements for material changes to product descriptions. *See* 39 CFR 3020.81(c).

By requiring the Postal Service to explain the potential effects of a size and weight limitation change, the proposed amendment addresses the concern that updates to size and weight limitations could materially impact users of the product and competitors. The proposed amendment also allows the Commission to evaluate whether the size and weight limitation update effectively modifies the product lists. Furthermore, although it would be required to explain the potential effects of the size/weight limitation, the Postal Service could also describe any mitigating factors or explain explicitly why the change would not modify the product lists.

[1] *See, e.g.,* Docket No. MC2019–3, Notice of the United States Postal Service of Update to the Maximum Weight Limit for Outbound Single-Piece First-Class Mail International Large Envelopes (Flats) in the Mail Classification Schedule, October 10, 2018, at 3–6.

Receiving this information at the outset of the proceeding promotes transparency with the Commission and the public on the potential effects of a size and weight limitation change. Moreover, by receiving this information in the notice, the Commission can more efficiently evaluate a size/weight limitation change within the 45-day statutory deadline by limiting information requests on potential harm to users and competitors. Thus, the proposed amendment will assist the Commission in evaluating whether a size and weight limitation is in accordance with the policies and the applicable criteria of chapter 36 of title 39 of the United States Code.

III. Proposed Rules

The Commission proposes to revise § 3020.111(a) to require additional information that the Postal Service must file with a notice of an update to size and weight limitations for market dominant mail matter.

List of Subjects for 39 CFR Part 3020

Administrative practice and procedure, Postal Service.

For the reasons stated in the preamble, the Commission proposes to amend chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3020—PRODUCT LISTS

■ 1. The authority citation for part 3020 continues to read as follows:

Authority: 39 U.S.C. 503, 3622, 3631, 3642, 3682.

■ 2. Amend § 3020.111, by revising paragraph (a) to read as follows:

§ 3020.111 Limitations applicable to market dominant mail matter.

(a) The Postal Service shall inform the Commission of updates to size and weight limitations for market dominant mail matter by filing notice with the Commission 45 days prior to the effective date of the proposed update. The notice shall:

(1) Include a copy of the applicable sections of the Mail Classification Schedule and the proposed updates therein in legislative format;

(2) Describe the likely impact that the proposed update will have on users of the product(s) and on competitors; and

(3) Describe how the proposed update is in accordance with the policies and the applicable criteria of chapter 36 of title 39 of the United States Code.

* * * * *

By the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2019–09853 Filed 5–13–19; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2018–0836; FRL–9993–60–OAR]

RIN 2060–AU43

Relaxation of the Federal Reid Vapor Pressure (RVP) Gasoline Volatility Standard for the Atlanta RVP Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a request from Georgia for EPA to relax the federal Reid Vapor Pressure (RVP) standard applicable to gasoline introduced into commerce from June 1 to September 15 of each year for the following Georgia counties: Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding, and Rockdale (the ''Atlanta RVP Area''). Specifically, EPA is proposing to amend the regulations to allow the RVP standard for the Atlanta RVP Area to change from 7.8 pounds per square inch (psi) to 9.0 psi for gasoline. EPA has preliminarily determined that this change to the federal RVP regulation is consistent with the applicable provisions of the Clean Air Act (CAA).

DATES: Written comments must be received on or before June 13, 2019 unless a public hearing is requested by May 29, 2019. If EPA receives such a request, we will publish information related to the timing and location of the hearing and a new deadline for public comment.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2018–0836, to the *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. 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 disclosure of which is restricted by statute. If you need to include CBI as part of your comment, please visit *https://www.epa.gov/dockets/commenting-epa-dockets* for instructions. 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.

For additional submission methods, the full EPA public comment policy, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: David Dickinson, Office of Transportation and Air Quality, Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, DC 20460; telephone number: (202) 343–9256; fax number: (202) 343–2804; email address: *dickinson.david@epa.gov.* You may also contact Rudolph Kapichak, Office of Transportation and Air Quality, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, Michigan, 48105; telephone number: (734) 214–4574; fax number: (734) 214–4052; email address: *kapichak.rudolph@epa.gov.*

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

I. General Information

A. Does this action apply to me?

Entities potentially affected by this proposed rule are fuel producers and distributors involved in the supplying of gasoline to Shelby County.

Examples of potentially regulated entities	NAICS [1] codes
Petroleum refineries	324110.
Gasoline Marketers and Distributors.	424710, 424720.
Gasoline Retail Stations	447110.
Gasoline Transporters	484220, 484230.

The above table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. The table lists the types of entities of which EPA is aware that potentially could be affected by this proposed rule. Other types of entities not listed on the table could also be affected. To determine whether your organization could be affected by this proposed rule, you should carefully examine the regulations in 40 CFR 80.27. If you have questions regarding

[1] North American Industry Classification System.

the applicability of this action to a particular entity, call the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

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

The statutory authority for this action is granted to EPA by sections 211(h) and 301(a) of the CAA, as amended; 42 U.S.C. 7545(h) and 7601(a).

II. Public Participation

EPA will not hold a public hearing on this matter unless a request is received by the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble by May 29, 2019. If EPA receives such a request, we will publish information related to the timing and location of the hearing and a new deadline for public comment.

III. Background and Proposal

A. Summary of the Proposal

EPA is proposing to approve a request from Georgia to change the summertime federal RVP standard for the Atlanta RVP Area from 7.8 psi to 9.0 psi by amending EPA's regulations at 40 CFR 80.27(a)(2). In a separate rulemaking, EPA has approved both a revised maintenance plan and CAA section 110(*l*) non-interference demonstration, which conclude that relaxing the federal RVP requirement from 7.8 psi to 9.0 psi for gasoline sold from June 1 to September 15 of each year in the Atlanta RVP Area would not interfere with the maintenance of the ozone national ambient air quality standards (NAAQS) and the maintenance of the other NAAQS, or with any other applicable CAA requirement. (*See* 84 FR 16786, April 23, 2019.)

On July 18, 2016, Georgia submitted a redesignation request and maintenance plan for the 15-county 2008 ozone NAAQS, which EPA approved on June 2, 2017 (82 FR 25523).[2] The maintenance plan included estimated emissions through 2030 and modeled 7.8 psi for the RVP requirements in the Atlanta RVP Area. Georgia did not, at that time, request the relaxation of the federal RVP requirements for the Atlanta RVP Area. Since then, EPA has also designated a portion of the Atlanta RVP Area as a nonattainment area for the 2015 ozone NAAQS.[3] More recently, Georgia requested a relaxation of the federal RVP requirements. This has necessitated a demonstration that relaxing the federal RVP requirement from 7.8 psi to 9.0 psi for gasoline sold from June 1 to September 15 of each year in the Atlanta RVP Area would not interfere with maintenance of any NAAQS, including the 2008 and 2015 ozone NAAQS, or any other applicable CAA requirement, under CAA section 110(*l*). Therefore, by a subsequent rulemaking, EPA approved Georgia's non-interference demonstration and its related revised maintenance plan for the 15-county 2008 ozone NAAQS maintenance area. The subsequent rulemaking also approved Georgia's non-interference demonstration for the 7-county 2015 ozone NAAQS nonattainment area.[4]

The preamble for this rulemaking is organized as follows: Section III.B. provides the history of the federal gasoline volatility regulation. Section III.C. describes the policy regarding relaxation of gasoline volatility standards. Section III.D. provides information specific to Georgia's request for the Atlanta RVP Area.

B. History of the Gasoline Volatility Requirement

On August 19, 1987 (52 FR 31274), EPA determined that gasoline nationwide was becoming increasingly volatile, causing an increase in evaporative emissions from gasoline-powered vehicles and equipment. Evaporative emissions from gasoline, referred to as volatile organic compounds (VOCs), are precursors to the formation of tropospheric ozone and contribute to the nation's ground-level ozone problem. Exposure to ground-level ozone can reduce lung function, thereby aggravating asthma and other respiratory conditions, increase susceptibility to respiratory infection, and may contribute to premature death in people with heart and lung disease.

The most common measure of fuel volatility that is useful in evaluating gasoline evaporative emissions is RVP. Under CAA section 211(c), EPA promulgated regulations on March 22, 1989 (54 FR 11868) that set maximum limits for the RVP of gasoline sold during the regulatory control periods that were established on a state-by-state basis in that final rule. The regulatory control periods addressed the portion of the year when peak ozone concentrations were expected. These regulations constituted Phase I of a two-phase nationwide program, which was designed to reduce the volatility of gasoline during the high ozone season. On June 11, 1990 (55 FR 23658), EPA promulgated more stringent volatility controls as Phase II of the volatility control program. These requirements established maximum RVP standards of 9.0 psi or 7.8 psi (depending on the state, the month, and the area's initial ozone NAAQS attainment designation with respect to the 1-hour ozone NAAQS).

The 1990 CAA Amendments established new CAA section 211(h) to address fuel volatility. CAA section 211(h) requires EPA to promulgate regulations making it unlawful to sell, offer for sale, dispense, supply, offer for supply, transport, or introduce into commerce gasoline with an RVP level in excess of 9.0 psi during the high ozone season. CAA section 211(h) also prohibits EPA from establishing a volatility standard more stringent than 9.0 psi in an attainment area, except that EPA may impose a lower (more stringent) standard in any former ozone NAAQS nonattainment area redesignated to attainment.

On December 12, 1991 (56 FR 64704), EPA modified the Phase II volatility regulations to be consistent with CAA section 211(h). The modified regulations prohibited the sale of gasoline with an RVP above 9.0 psi in all areas designated attainment for ozone, effective January 13, 1992. For areas designated as nonattainment, the regulations retained the original Phase II standards published on June 11, 1990 (55 FR 23658), which included the 7.8 psi ozone season limitation for certain areas. As stated in the preamble to the Phase II volatility controls and reiterated in the proposed change to the volatility standards published in 1991, EPA will rely on states to initiate changes to their respective volatility programs. EPA's policy for approving such changes is described below in Section III.C.

C. Relaxation of Gasoline Volatility Standards

EPA stated in the amended Phase II volatility standards (56 FR 64706), that any change in the gasoline volatility standard for a nonattainment area that was subsequently redesignated as an attainment area must be accomplished through a separate rulemaking that revises the applicable standard for that area. Thus, the federal 7.8 psi gasoline RVP requirement remains in effect, even

[2] The 15-county 2008 ozone NAAQS maintenance area includes the following counties: Bartow, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding, and Rockdale. The 13-county Atlanta RVP Area covered by the federal RVP requirement includes the same counties with the exception of Bartow and Newton Counties.

[3] EPA designated seven counties in the Atlanta RVP Area as nonattainment for the 2015 ozone NAAQS, the seven counties are: Bartow, Clayton, Cobb, DeKalb, Fulton, Gwinnett and Henry. (*See* 83 FR 25776, June 4, 2018.)

[4] EPA approved Georgia's non-interference demonstration and revised maintenance plan on April 23, 2019 (84 FR 16786).

after such an area is redesignated to attainment, until a separate rulemaking is completed that relaxes the federal gasoline RVP standard in that area from 7.8 psi to 9.0 psi.

As explained in the December 12, 1991 rulemaking, EPA believes that relaxation of an applicable gasoline RVP standard is best accomplished in conjunction with the redesignation process. In order for an ozone NAAQS nonattainment area to be redesignated as an attainment area, CAA section 107(d)(3) requires the state to make a showing, pursuant to CAA section 175A, that the area is capable of maintaining attainment for the ozone NAAQS for ten years. Depending on the area's circumstances, this maintenance plan will either demonstrate that the area is capable of maintaining attainment for ten years without the more stringent volatility standard or that the more stringent volatility standard may be necessary for the area to maintain its attainment with the ozone NAAQS. Therefore, in the context of a request for redesignation, EPA will not relax the gasoline volatility standard unless the state requests a relaxation and the maintenance plan demonstrates that the area will maintain attainment for ten years without the need for the more stringent volatility standard. Similarly, a maintenance plan may be revised to relax the gasoline volatility standard if the state requests a relaxation and the maintenance plan demonstrates that the area will maintain attainment for the duration of the maintenance plan.

In the context of this rulemaking, EPA must consider the applicability of its longstanding policy and practice of approving RVP relaxations in areas that are either designated attainment or have been redesignated to attainment for all relevant ozone NAAQS. As previously explained, given that a portion of the Atlanta RVP Area is a designated nonattainment area for the 2015 ozone NAAQS,[5] EPA has also considered agency practices and policy for the approval of requests from states to opt out of reformulated gasoline (RFG) and removal of state fuel regulations from approved SIPs. With regard to state requests to opt out of RFG, EPA's RFG opt-out regulations allow for the approval of a state's request regardless of whether the area is either designated nonattainment or has been redesignated to attainment for the relevant ozone NAAQS (40 CFR 80.72). Further, EPA has approved the removal of state fuel regulations from an approved SIP where subject areas were designated nonattainment for an ozone NAAQS at the time of the action.[6] EPA has extended these various practices and policy to Georgia's RVP relaxation request given that a portion of the Atlanta RVP Area is also designated as nonattainment area for the 2015 ozone NAAQS.[7] Given past actions with respect to ozone NAAQS nonattainment areas, EPA is proposing to approve relaxations of the federal 7.8 psi RVP standard in areas that are designated as nonattainment.

The primary requirement in approving RFG opt-out requests and SIP revisions to remove approved fuel regulations is that the subject state must demonstrate that the relevant area will be able to attain the ozone NAAQS by the required attainment date without relying on emissions reductions from RFG or the state fuel regulation. This has been accomplished by the state submitting and EPA approving a SIP revision that includes an appropriate CAA section 110(*l*) non-interference demonstration. In most cases, this has necessitated that the state SIP revision includes additional controls on emissions that will offset any increased emissions. The CAA section 110(*l*) requirement also applies to the relaxation of the federal 7.8 psi RVP limit. Therefore, where EPA approves a CAA section 110(*l*) non-interference demonstration associated with an RVP relaxation for an ozone NAAQS nonattainment area, EPA may approve a relaxation of the gasoline RVP limit from 7.8 psi to 9.0 psi consistent with EPA's precedent to date.

D. Georgia's Request To Relax the Federal Gasoline RVP Requirement for the Atlanta RVP Area

On August 15, 2018, the Georgia Department of Natural Resources, Environmental Protection Division (Georgia or State), submitted a request to relax the federal gasoline RVP requirement in the Atlanta RVP Area. The State also submitted a CAA section 110(*l*) non-interference demonstration and revised maintenance plan for approval by EPA. The non-interference demonstration shows that the relaxation would not interfere with maintenance of the 2008 ozone NAAQS for the 15-county 2008 ozone NAAQS maintenance area or any other applicable CAA requirement, including the 2015 ozone NAAQS. As previously explained, Georgia did not request relaxation of the federal RVP standard from 7.8 psi to 9.0 psi when the State originally submitted the CAA section 175A maintenance plan for the 2008 ozone NAAQS that was approved on June 2, 2017 (82 FR 25523). Georgia's CAA section 110(*l*) non-interference demonstration for the 2015 ozone NAAQS demonstrated that timely attainment for the 2015 ozone NAAQS would not be delayed if the federal RVP standard was relaxed. This was accomplished by including additional controls that serve to reduce emissions to make up the emission reductions that are removed through the relaxation of the federal RVP limit from 7.8 psi to 9.0 psi.

On April 23, 2019, EPA approved Georgia's August 15, 2018 request for a revised maintenance plan approval and its CAA section 110(*l*) non-interference demonstration. In that rulemaking, EPA included an evaluation of Georgia's CAA section 110(*l*) non-interference demonstration for the 15-county 2008 ozone NAAQS maintenance area and the 7-county 2015 ozone NAAQS nonattainment area (including the additional control measures incorporated into the SIP to ensure timely attainment of the 2015 ozone NAAQS).[8] EPA received one comment on this rulemaking that supported EPA's approval of Georgia's request but conditioned the support based on EPA establishing a compliance date for the relaxation that would not disrupt the marketplace or negatively impact retailers and marketers. EPA noted that this comment was outside the scope of that rulemaking, which was related to the approval of a revised maintenance plan and CAA section 110(*l*) demonstration. The compliance date of a relaxation of the RVP limit would be established through this rulemaking, which, if finalized, will revise the RVP limit for the Atlanta area from 7.8 psi to 9.0 psi.

In today's action, EPA is proposing to approve Georgia's request to relax the summertime ozone season federal RVP gasoline standard for the Atlanta RVP Area from 7.8 psi to 9.0 psi. Specifically, EPA is proposing to amend the applicable standard to allow the gasoline RVP requirements at 40 CFR

[5] EPA designated seven counties in the Atlanta RVP Area as nonattainment for the 2015 ozone NAAQS, the seven counties are: Bartow, Clayton, Cobb, DeKalb, Fulton, Gwinnett and Henry. (*See* 83 FR 25776, June 4, 2018.)

[6] For example, on December 20, 2018 (83 FR 65301), EPA approved the removal of Pennsylvania's regulation requiring the sale of gasoline with an RVP of 7.8 psi from June 1st to September 15th of each year in the Pittsburgh area, which is designated as a Marginal nonattainment area for the 2008 ozone NAAQS.

[7] EPA designated seven counties in the Atlanta area as nonattainment for the 2015 ozone NAAQS, the seven counties are: Bartow, Clayton, Cobb, DeKalb, Fulton, Gwinnett and Henry. (*See* 83 FR 25776, June 4, 2018.)

[8] For further details, see 84 FR 16786 (April 23, 2019).

80.27(a)(2) for the counties in the Atlanta RVP Area to change from 7.8 psi to 9.0 psi. Today's proposal is based on Georgia's August 15, 2018 submission of a CAA section 110(*l*) non-interference demonstration and maintenance plan revision, and EPA's April 23, 2019 approval of Georgia's submission.

EPA believes that a final rule that raises the RVP standard for gasoline from 7.8 psi to 9.0 psi would be ''a substantive rule which . . . relieves a restriction'' within the meaning of 5 U.S.C. 553(d)(1). Accordingly, EPA may decide to make the publication date of a final rule based on this proposal serve as the compliance date of the final rule.

IV. Statutory and Executive Order Reviews

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

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and therefore was not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

This action is considered an Executive Order 13771 deregulatory action. This proposed rule, if finalized, would provide meaningful burden reduction because it would relax the federal RVP standard for gasoline, and as a result, fuel suppliers would no longer be required to provide the lower RVP gasoline in the Atlanta RVP Area during the summer months. Relaxing the volatility requirements would also be beneficial because this action, if finalized, could improve the fungibility of gasoline sold in Georgia by allowing the gasoline sold in the Atlanta RVP Area to be identical to the fuel sold in the remainder of the State.

C. Paperwork Reduction Act

This action does not impose any new information collection burden under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.,* and therefore is not subject to these requirements.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. The small entities subject to the requirements of this action are refiners, importers or blenders of gasoline that choose to produce or import low RVP gasoline for sale in Georgia, and gasoline distributers and retail stations in Georgia. This action, if finalized, would relax the federal RVP standard for gasoline sold in the Atlanta RVP Area during the summertime ozone season (June 1 to September 15 of each year) to allow the RVP for gasoline sold in this area to rise from 7.8 psi to 9.0 psi. This rule does not impose any requirements or create impacts on small entities beyond those, if any, already required by or resulting from the CAA section 211(h) Volatility Control program. Therefore, this action, if finalized, would have no net regulatory burden for all directly regulated small entities.

E. Unfunded Mandates Reform Act (UMRA)

This proposed rule does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action would implement mandates that are specifically and explicitly set forth in CAA section 211(h) without the exercise of any policy discretion by EPA.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed rule would affect only those refiners, importers or blenders of gasoline that choose to produce or import low RVP gasoline for sale in the Atlanta RVP Area and gasoline distributers and retail stations in the Area. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. EPA has no reason to believe that this action may disproportionately affect children since Georgia has provided evidence that a relaxation of the gasoline RVP will not interfere with its attainment of the ozone NAAQS or any other applicable CAA requirement. By separate action, EPA has approved Georgia's non-interference demonstration regarding its maintenance plan for the 2008 ozone NAAQS for the 15-county 2008 ozone NAAQS maintenance area, and that Georgia's relaxation of the gasoline RVP standard in the Atlanta RVP Area to 9.0 RVP will not interfere with any other NAAQS (including attainment of the 2015 ozone NAAQS) or CAA requirement.

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

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

EPA believes the human health or environmental risk addressed by this action would not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations because it does not affect the applicable ozone NAAQS (*i.e.,* the 2008 and 2015 ozone NAAQS), which establish the level of protection provided to human health or the environment. Georgia has demonstrated in its non-interference demonstration that this action will not interfere with maintenance of the 2008 ozone NAAQS for the 15-county 2008 ozone NAAQS maintenance area, or with any other applicable requirement of the CAA, including timely attainment of the 2015 ozone NAAQS. Therefore,

disproportionately high and adverse human health or environmental effects on minority or low-income populations are not an anticipated result. The results of this evaluation are contained in EPA's proposed and final rules for Georgia's non-interference demonstration. A copy of Georgia's August 15, 2018 letter requesting that EPA relax the gasoline RVP standard, including the technical analysis demonstrating that the less stringent gasoline RVP would not interfere with continued maintenance of the 2008 ozone NAAQS or with any other applicable CAA requirement, including timely attainment of the 2015 ozone NAAQS, has been placed in the public docket for this action.

V. Legal Authority

The statutory authority for this action is granted to EPA by sections 211(h) and 301(a) of the Clean Air Act, as amended; 42 U.S.C. 7545(h) and 7601(a).

List of Subjects in 40 CFR Part 80

Environmental protection, Administrative practice and procedures, Air pollution control, Fuel additives, Gasoline, Motor vehicle and motor vehicle engines, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: May 7, 2019.

Andrew R. Wheeler,

Administrator.

[FR Doc. 2019–09929 Filed 5–13–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2012–0038]

RIN 2127–AK18

Federal Motor Vehicle Safety Standards; Accelerator Control Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws the notice of proposed rulemaking (NPRM) published in the **Federal Register** on April 16, 2012, proposing amendments to Federal Motor Vehicle Safety Standard FMVSS No. 124, *Accelerator Control Systems.* The NPRM proposed to make two amendments to the standard: add a new brake-throttle override (BTO) requirement to address unintended acceleration situations and amend the return-to-idle requirements to include electronic throttle control (ETC) systems. After further analysis of the comments received and other considerations, the agency has decided to withdraw the rulemaking proposal because: the widespread adoption of the BTO system makes FMVSS changes unnecessary and a broader understanding of safe design of vehicle electronic control systems is needed to make an informed decision on regulating return-to-idle on ETC systems.

DATES: The NPRM published in the **Federal Register** on April 16, 2012, at 77 FR 22638, is withdrawn as of May 14, 2019.

ADDRESSES: Comments on the NPRM are available in Docket No. NHTSA–2012–0038 at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Pyne, Office of Crash Avoidance Standards, by telephone at 202–366–4171, and by fax at 202–493–2990 or David Jasinski, Office of the Chief Counsel, by telephone at 202–366–2992, and by fax at 202–366–3820. You may send mail to these officials at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

Acceleration control is one of the fundamental aspects of the driving task and is critical for the safe operation of a motor vehicle. Traditionally, a driver uses a pedal to control the amount of engine torque provided to accelerate the vehicle and maintain a desired speed, as well as to reduce or remove torque to slow the vehicle. Loss of acceleration control, which includes ''unintended acceleration'' (UA), can have serious safety consequences. Based on NHTSA's previous review and analysis of vehicle owner-provided narratives in the Vehicle Owner's Questionnaire (VOQ) database,[1] some UA incidents appear to have involved stuck or trapped accelerator pedals, and a portion of those incidents resulted in crashes. UA events can arise from driver error or vehicle problems, such as accelerator pedal interference that prevents the pedal from being fully released. Another possible failure is separation of throttle-control components, which was more of a risk when mechanical linkages were commonly used; however, the agency was not able to identify that type of failure with certainty from the limited technical information available in the VOQs.

FMVSS No. 124 was created to address loss of control of vehicle acceleration by establishing requirements for return of a vehicle's throttle to the idle position when the driver removes the actuating force from the accelerator control (''normal operation'') or in the event of a severance or disconnection in the accelerator control system (''failsafe operation'').[2] The wording of the requirements in FMVSS No. 124 focuses on maintaining accelerator control via return springs acting directly or remotely through linkages on the throttle plate of gasoline-powered vehicles and on the fuel control rack in the case of diesel-powered vehicles.

II. Summary of the Notice of Proposed Rulemaking

On April 16, 2012, the agency published an NPRM to amend FMVSS No. 124, *Accelerator Control Systems* (ACS).[3] The NPRM proposed to make two fundamental changes to the standard: (1) Add a new brake-throttle override (BTO) requirement to address unintended acceleration situations, and (2) amend the return-to-idle requirements and test procedures to apply explicitly to electronic throttle control (ETC) systems. The latter proposed change involved extensive enhancement of the test procedures for gasoline and diesel engines and included new procedures for electric and hybrid vehicle propulsion systems. The first part of the NPRM, requiring a BTO system, would apply to vehicles that have a gross vehicle weight rating of 10,000 pounds (4,536 kilograms) or less and that are equipped with ETC systems. The second part, updating the throttle control disconnection test procedures, also called return-to-idle functions, would apply to all passenger cars, multipurpose passenger vehicles, trucks, and buses, regardless of gross vehicle weight rating.

As background, the proposed return-to-idle requirements in the 2012 NPRM were a follow-up to a previous rulemaking involving an NPRM published in 2002 [4] but later withdrawn in 2004.[5] The 2002 NPRM was

[1] *https://www.safercar.gov/.*

[2] See 49 CFR 571.124.

[3] 77 FR 22638.

[4] 67 FR 48117.

[5] 69 FR 65126.

withdrawn because the agency concluded further research was needed on the proposed return-to-idle test procedures. Part of the intent of the 2012 NPRM was to revisit the effort to amend the return-to-idle requirements and to address issues raised in the 2002 NPRM.

The 2012 NPRM proposed vehicle requirements and test procedures to minimize the risk that loss of vehicle control will be caused by either: (1) Accelerator control system (ACS) disconnections; or (2) accelerator pedal sticking and entrapment. For both of these safety risks, which could affect vehicles with mechanical as well as electronic throttle controls, the purpose was to ensure that stopping a vehicle is possible without extraordinary driver actions, that is, that releasing the accelerator pedal and stopping the vehicle with a normal brake application would be a sufficient driver response. For measuring return-to-idle in the event of a disconnection, the NPRM proposed an enhanced set of idle state criteria using powertrain factors such as fuel flow or electric power input to indicate the idle state, where each added criterion is analogous to throttle position (or fuel rack position in the case of diesels.) Additionally, the NPRM proposed a new and different type of measurement of vehicle drive propulsion based on the ''creep speed,'' which is defined as the speed of the vehicle with the transmission in gear and the accelerator pedal fully released. As a further amendment of FMVSS No. 124, the NPRM incorporated a new BTO requirement, which included both an equipment requirement to ensure vehicles would be outfitted with the necessary hardware and/or software and a performance requirement to ensure BTO system intervention in the event an accelerator pedal failed to release while the brake pedal was applied.

III. Summary of Comments

NHTSA received 37 comments regarding the 2012 NPRM.[6] These comments were submitted by 34 entities including three trade associations (Alliance of Automobile Manufacturers (Alliance), Global Automakers, and the Engine Manufacturers Association (EMA)); seven vehicle and equipment manufacturers (Delphi, Ford, General Motors (GM), Mitsubishi, Navistar, Nissan, and TRW); two safety advocacy groups (Advocates for Highway and Auto Safety, and Safety Research & Strategies, Inc.); one academic (Prof. McCann of the University of Oklahoma); and 21 individuals. Commenters from industry strongly opposed the return-to-idle and fail-safe requirements for ETC systems, and many commenters expressed concerns about BTO requirements.

Regarding the proposed BTO requirements, several comments from industry suggested certain conditions of the BTO test procedure need to be clarified: (1) Target vehicle speed, (2) accelerator pedal position, (3) gear or range selector position, (4) brake pedal application, (5) total number of tests, and (6) stopping distance requirements per FMVSS Nos. 105 and 135. Industry groups and individual manufacturers generally supported the intent of the rulemaking and agreed the standard should be updated to better address failure modes associated with ETC systems. Commenters from industry and from the general public described a variety of situations wherein two-pedal driving maneuvers are intentional and desirable, and expressed concern that BTO would interfere with these techniques. Numerous individual commenters requested an exemption from BTO requirements for manual-transmission vehicles, submitting that BTO would interfere with ''heel-and-toe'' shifting and that the clutch provides a viable failsafe in these vehicles. A few individuals opposed BTO requirements in general, dismissing the technology as unnecessary or as an inappropriate response to the problem of UA, which they said could be caused by electronic malfunctions or other issues not addressed by BTO. Some commenters maintained that UA can be counteracted by sufficient force on the brake pedal without BTO intervention. Commenters also had various specific concerns about test procedures and compliance criteria proposed in the NPRM. For example, vehicle manufacturers requested clarification of the proposed BTO braking-distance requirements, in particular, how the proposed FMVSS No. 124 requirements would relate to and be compatible with existing FMVSS No. 105 and 135 braking requirements.

Regarding NHTSA's proposal to amend the return-to-idle requirements for driver-operated ACS, some commenters disagreed with the idle state indicant options proposed for compliance verification. Delphi disagreed the engine should be required to fully return to idle following an ETC disconnection because that would lead to customer complaints. Instead, Delphi suggested the rule permit ETC systems to limit the maximum engine torque to approximately 50 percent of maximum, thus allowing the vehicle to be easily brought to a stop while avoiding a potentially startling loss of engine power. One individual commenter disagreed with the proposed rule's exclusion of a ''disconnection or severance inside of an electronic module'' from the failsafe return-to-idle requirement in S5.2.1 of the proposal, but the commenter did not provide supporting information or discuss an alternative approach.

Many manufacturers and industry groups opposed the proposal to measure return-to-idle in the event of a disconnection by measuring the creep speed of the vehicle. The Alliance, GM, Navistar, and Nissan all opposed the lack of a tolerance in the return-to-idle requirement for normal operation, which states the vehicle must return within one second to an idle state that is ''less than or equal to'' the baseline state after release of the accelerator pedal. Each requested a reasonable baseline definition and tolerance to allow for intentional overshooting/undershooting of any given idle state indicant. Nissan suggested the return-to-idle requirement for normal operation be deleted entirely, or, if that was not acceptable, a 50 percent tolerance should be provided to accommodate intended vehicle behaviors. For example, some vehicles are designed to return to an idle state above the baseline to improve emissions performance or to prevent stalling. Navistar stated it assumed manufacturers will be allowed to define a reasonable baseline definition and tolerance accounting for variation in the selected idle state indicant, and it requested clarification this was the proposed rule's intent.

Addressing another technical concern, the Alliance stated that a one-second reaction time was too short of a time interval for idle indicants such as calculated axle torque, which measures response at the vehicle's drive wheels and which thus responds more slowly than fast-reacting indicants such as the throttle position that measures engine power input. The Alliance provided this comment in the context of its recommendation to add calculated axle torque and calculated engine load to the list of optional idle indicants the rule would allow.

In the NPRM, NHTSA requested comment on the appropriateness of each of the proposed, optional compliance criteria (throttle position, fuel delivery rate, air intake rate, electric power delivery, and creep speed/coastdown performance). Several commenters stated that the proposed options were overly restrictive. GM stated modern engine control algorithms cause the value of each proposed indicant to vary

[6] Comments are available in Docket No. NHTSA–2012–0038 at *http://www.regulations.gov*.

even when a vehicle is operating at a steady idle. In fact, GM stated it is essential the proposed indicants vary to maintain a steady idle as other factors like ambient temperature, engine temperature, and accessory load change. The Alliance, EMA, Ford, GM, and Navistar suggested calculated axle torque should be included as an acceptable idle indicant because it is reliable, easily measured, and represents the ultimate output of the powertrain. In contrast, other indicants (throttle position, fuel delivery rate, etc.) are inputs to the engine whose effect on drive torque can vary depending on other factors. They further stated axle torque is a consistent and reliable idle indicant for any vehicle regardless of powertrain type or design because it represents the net result of all the vehicle inputs affecting the response at the drive wheels.

The Alliance, Ford, and GM also recommended calculated engine load be added as an acceptable idle indicant. Navistar recommended a broad definition of idle state indicant (rather than a prescriptive list), as such a definition would remain current as new technologies develop.

The Alliance and Ford disagreed with the ''irrevocable selection'' requirement,[7] and Ford pointed out it is inconsistent with rulemaking procedures requiring the agency to focus on vehicle minimum performance rather than the manufacturer's design choice to meet that performance. They commented that, as a result of NHTSA's approach in the NPRM, a system that is compliant with one particular idle indicant could be deemed non-compliant as a result of a manufacturer's prior, irrevocable choice of a different indicant. The Alliance and Ford recommended the irrevocable selection requirement be deleted or specified to apply only to a specific vehicle/propulsion system in combination with model years and not indefinitely to an entire model line. Similarly, the Alliance suggested manufacturers be allowed to choose one option for each test, which, in the above example, would enable manufacturers to select the creep speed/coastdown option for S5.2, while Ford recommended that creep speed/coastdown specifically be included as a compliance option for S5.1.

[7] Irrevocable selection in this case means that the manufacturer must select only one of the available idle state indicants for certification of a vehicle, and the manufacturer may not change the selection for that vehicle later on.

IV. Rationale for Withdrawal

First, with respect to the proposed BTO requirement to address UA situations, NHTSA has received information from manufacturers showing that, as of model year 2018, all light vehicles for sale in the U.S. market have been voluntarily equipped with a BTO system. The information suggests these BTO systems are designed to address the intended safety function by ensuring input to the brake pedal in a vehicle acts on the throttle control system to override simultaneous input to the accelerator pedal. In fact, NHTSA noted in the 2012 NPRM nearly all manufacturers had already equipped their model year 2012 light vehicles with a BTO system, indicating the great majority of new U.S. vehicles have had that safety feature for several model years prior to 2018. NHTSA does not anticipate any manufacturers removing BTO systems from any vehicles in the future. Therefore, NHTSA does not find that there is presently a safety need for a BTO requirement in FMVSS No. 124.

As for the return-to-idle requirements for ETC systems, NHTSA has decided that proposing an extensive upgrade of FMVSS No. 124 in a way that provides meaningful protection from a variety of possible ETC system failures is not currently feasible. Modern ETC systems have become highly complex, software-driven systems that are fully integrated with electronic powertrain controls and other on-board computerized electronics, making it impractical to address the throttle control function independently of other electronic control functions and systems in a vehicle. To effectively complete a rulemaking on ETC, it is apparent from comments and other information that NHTSA should take an approach that considers the overall functional safety of vehicle electronic powertrain control systems.

As vehicle powertrain controls and other vehicle systems have grown more complex over the years, the automotive industry has formed working groups to address functional safety. One of the most prominent efforts in this area is the creation of a voluntary standard, ISO 26262, that provides a risk-based approach for the safe design of vehicle electronic systems. ISO 26262 evaluates functional safety of a system starting with initial system development and extending over the lifecycle. Using ISO 26262, the risk of hazardous outcomes is managed over the vehicle's lifecycle to address concerns related to electronic and electrical failures.

Although NHTSA recently completed research on potential causes of electronic throttle control system failures using functional safety analyses, and this research puts the agency in a better position to consider alternative ways to ensure the safety, security, and reliability of these systems, the field of functional safety and security of vehicle electronic systems is changing rapidly. While there are functional safety guidelines or recommended practices that exist, they are heavily focused on the vehicle design process, and it would be difficult for NHTSA to derive performance requirements based on those documents.

In addition, one specific unresolved issue from the NPRM is that some commenters reported idle state measurements that vary beyond the proposed 50-percent tolerance because different idle control strategies are needed based on driving conditions, environmental conditions, and other factors. All of the test procedures in the NPRM rely on a tolerance in order to limit overall powertrain output to a level that is reasonably close to the level that exists at idle. An idle state tolerance much higher than 50 percent may allow a significant and possibly uncontrollable amount of drive torque which would, to some extent, defeat the safety purpose of the standard. While this specific issue may be resolvable in time, it currently is an additional obstacle to moving forward with the proposed test procedures.

Furthermore, although comments on the NPRM did not focus on the question of scope of failure modes addressed by FMVSS No. 124, upgrading and possibly expanding the types of failures covered by FMVSS No. 124 still could raise scope concerns. Presently, the sole failure mode addressed in FMVSS No. 124 is disconnection or severance within the ACS. The proposed rule included, for example, a powertrain output test procedure based on the measurement of vehicle creep speed in the event of a failure caused by disconnection or severance. However, it is unknown whether inadvertent physical disconnection of electrical ACS components, which might occur because of wear, vibration, heat-cycling, etc., is the failure mode of greatest concern or even an appreciable safety risk. NHTSA currently does not have information such as test data, VOQs, defect reports, service campaigns, or manufacturer data indicating that the risk of disconnections is a proven safety problem for systems comprised of electrical components rather than mechanical ones. Consequently, the relevance of an ETC safety standard that focuses on disconnections as the only failure mode is highly questionable.

Unless other types of failure modes could be added to FMVSS No. 124 without expanding the scope of the standard, the return-to-idle requirements of an upgraded standard would not necessarily address the potential safety risks.

V. Conclusion

Based on its evaluation of the available information, NHTSA has concluded a BTO requirement is not necessary at this time and that there are substantial challenges associated with developing objective tests both for the operation of BTO and for return-to-idle requirements for ETC systems, and these obstacles make a rulemaking not feasible at this time. Accordingly, the agency withdraws the proposed amendment of the safety standard for ACS. NHTSA will continue to monitor the safety performance of throttle control systems in motor vehicles and may consider rulemaking or other appropriate action in the future if it is necessary for vehicle safety.

The NPRM contained in docket number NHTSA–2012–0038, as published in the **Federal Register** on April 16, 2012, at 77 FR 22638, is withdrawn.

Issued in Washington, DC, under authority delegated in 49 CFR 1.95 and 501.5.

Heidi Renate King,

Deputy Administrator.

[FR Doc. 2019–09820 Filed 5–13–19; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–HQ–ES–2018–0097; FXES11130900000C2–189–FF09E32000]

RIN 1018–BD60

Endangered and Threatened Wildlife and Plants; Removing the Gray Wolf (Canis lupus) From the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), recently published a proposal to remove the gray wolf from the List of Endangered and Threatened Wildlife, and we announced the opening of a 60-day public comment period on the proposed action, ending May 14, 2019. We now extend the public comment period 60 days to allow all interested parties additional time to comment on the proposed rule. Comments previously submitted need not be resubmitted and will be fully considered in preparation of the final rule. In addition, we will provide public-hearing information through the **Federal Register** in the near future.

DATES: The public comment period on the proposed rule that published March 15, 2019 at 84 FR 9648, is extended to July 15, 2019.

Written Comments: Please note that comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date and comments submitted by U.S. mail must be postmarked by that date to ensure consideration.

ADDRESSES:

Availability of Documents: You may obtain copies of the March 15, 2019, proposed rule and associated documents on the internet at *http://www.regulations.gov* under Docket No. FWS–HQ–ES–2018–0097.

Written Comments: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Search for FWS–HQ–ES–2018–0097, which is the docket number for this rulemaking. Please ensure you have found the correct document before submitting your comments. If your comments will fit in the provided comment box, please use this feature of *http://www.regulations.gov,* as it is most compatible with our comment review procedures. If you attach your comments as a separate document, our preferred file format is Microsoft Word. If you attach multiple comments (such as form letters), our preferred format is a spreadsheet in Microsoft Excel.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: Docket No. FWS–HQ–ES–2018–0097; U.S. Fish & Wildlife Service Headquarters, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all substantive comments we receive on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Public Comments below for more information).

FOR FURTHER INFORMATION CONTACT: Don Morgan, Chief, Branch of Delisting and Foreign Species, Ecological Services; U.S. Fish and Wildlife Service, Headquarters Office, MS: ES, 5275 Leesburg Pike, Falls Church, VA 22041–3803. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Under the authority of the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*), the List of Endangered and Threatened Wildlife (List) in title 50 of the Code of Federal Regulations (50 CFR 17.11(h)) currently includes the gray wolf (*Canis lupus*). On March 15, 2019, the Service proposed to remove gray wolves in the lower 48 United States and Mexico from the List and opened a 60-day public comment period on the proposed action (84 FR 9648). The Service now extends the comment period as specified above in **DATES**.

Public Comments

We will accept comments and information during this extended comment period on our proposal to remove the gray wolf (*Canis lupus*) from the List. We will consider information and recommendations from all interested parties. We intend that any final action resulting from this proposal will be based on the best scientific and commercial data available and will be as accurate and as effective as possible. Our final determination will take into consideration all comments and any additional information we receive during the comment period. Therefore, the final decision may differ from the March 15, 2019, proposed rule, based on our review of all information received during this rulemaking.

If you already submitted comments or information on the March 15, 2019, proposed rule, please do not resubmit them. Any such comments are incorporated as part of the public record of this rulemaking proceeding, and we will fully consider them in the preparation of our final determination.

Our March 15, 2019, proposal replaces our June 13, 2013, proposal to remove gray wolves in the lower 48 United States and Mexico from the List (78 FR 35663). Therefore, we ask any persons or entities who submitted comments on the June 13, 2013, proposal that are relevant to the status of wolves currently listed in the contiguous United States and Mexico as analyzed in the March 15, 2019, proposal to resubmit their comments at this time. Comments must be submitted during the comment period for the March 15, 2019, proposed rule to be considered.

Comments should be as specific as possible. Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you assert. Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, will not meet the standard of best available scientific and commercial data. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is threatened or endangered must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**. You may also provide your comments through verbal testimony during the public hearing, details of which will be announced in an upcoming **Federal Register** document.

If you submit information via *http://www.regulations.gov,* your entire submission—including your personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–HQ–ES–2018–0097, or by appointment, during normal business hours at U.S. Fish and Wildlife Service Headquarters (see **FOR FURTHER INFORMATION CONTACT**).

Our final determination concerning the proposed action will take into consideration all written comments we receive during the open comment periods, comments received during the public hearing, and comments from peer reviewers. These comments will be included in the public record for this rulemaking, and we will fully consider them in the preparation of our final determination.

Public Hearing

We will hold one or more public hearings during the open comment period. We will provide information on the location, dates, and times of any hearings through publication in the **Federal Register** in the near future.

Authors

The primary authors of this notice are the Ecological Services staff of the Headquarters Office, U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: May 7, 2019.

Margaret E. Everson,

Principal Deputy Director, Exercising the Authority of the Director for the U.S. Fish and Wildlife Service.

[FR Doc. 2019–09857 Filed 5–13–19; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 84, No. 93
Tuesday, May 14, 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

Agricultural Marketing Service

[Docket No. AMS–ST–19–0040]

Notice of Request for Approval of a New Information Collection for ''Application for Plant Variety Protection Certification and Objective Description of Variety—Asexually Reproduced Varieties''

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget (OMB) for a new information collection, ''Application for Plant Variety Protection Certification and Objective Description of Variety—Asexually Reproduced Varieties.''

DATES: Comments must be received by July 15, 2019.

ADDRESSES: Interested persons are invited to submit comments concerning this notice by using the electronic process available at *http://www.regulations.gov*.Written comments may also be submitted to the Plant Variety Protection Office (PVPO), Science and Technology, Agricultural Marketing Service, USDA, 1400 Independence Avenue SW, Room 4512–S, Stop 0274, Washington, DC 20250 or by facsimile to (202) 260–8976. All comments should reference the docket number AMS–ST–19–0040, the date, and the page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Jeffery Haynes, Deputy Commissioner, Plant Variety Protection Office, AMS Science and Technology Program, USDA; 1400 Independence Avenue SW, Room 4512–S, Stop 0274, Washington, DC 20250–0002; telephone: (202) 260–8983; email: *Jeffery.Haynes@ams.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for Plant Variety Protection Certification and Objective Description of Variety—Asexually Reproduced Varieties.

OMB Number: 0581–NEW.

Expiration Date of Approval: This is a NEW collection.

Type of Request: Approval of a NEW information collection.

Abstract: The Plant Variety Protection Act (PVPA) (7 U.S.C. 2321 *et seq.*) was established to encourage the development of novel varieties of plants and make them available to the public, providing protection available to those who breed, develop, or discover them, and thereby promote progress in agriculture in the public interest.

The Plant Variety Protection program (PVP) is a voluntary user funded program that grants intellectual property rights protection to breeders of new, distinct, uniform, and stable sexually reproduced, tuber propagated, and asexually reproduced plant varieties. To obtain these property rights the applicant must provide information that shows the variety is eligible for protection and that it is indeed new, distinct, uniform and stable as the law requires. Application forms, descriptive forms, and ownership forms must be submitted by each applicant in order for the Plant Variety Protection Office (PVPO) to legally issue a certificate of protection (ownership). The certificate is based on claims of the breeder and cannot be issued on the basis of reports in publications not submitted by the applicant. Regulations implementing the PVPA appear at 7 CFR part 92.

Currently approved forms ST–470, Application for Plant Variety Protection Certificate; ST–470 A, Origin and Breeding History; ST–470 B, Statement of Distinctness; Form ST–470 series, Objective Description of Variety (Exhibit C); and Form ST–470–E, Basis of Applicant's Ownership, are the basis upon which the determination is made by experts at PVPO, whether a new, distinct, uniform, and stable sexually reproduced, or tuber propagated plant variety in fact exists and is entitled to protection (7 U.S.C. F;2402).

The 2018 Farm Bill (the Agriculture Improvement Act of 2018) amended section 2402 of the PVPA (7 U.S.C. F;2402) to include asexually reproduced plant varieties. Breeders can now apply for intellectual property protection for asexually reproduced plant varieties. AMS seeks approval of a new information collection for the application for a certificate of protection for asexually propagated plant varieties. Once approved, AMS will request that the new form be merged into OMB No. 0581–0055, which includes the currently approved ST–470 forms listed above.

The ST–470 application form combines Exhibits A, B, and E into one form. The information received on applications, with certain exceptions, is required by law to remain confidential until a certificate is issued (7 U.S.C. 2421).

The information collection requirements in this request are essential to carry out the intent of the PVPA, to provide applicants with certificates of protection, to provide the respondents the type of service they request, and to administer the program.

Estimate of Burden: Public reporting new burden for this collection of information is estimated to average .86 hours per response. This corresponds to 11.05 hrs. per respondent (total burden hours divided by number of respondents).

Respondents: Businesses or other for-profit, not-for-profit institutions, and Federal Government.

Estimated Number of Respondents: 50.

Estimated Number of Responses per Respondent: 12.82.

Estimated Total Annual Burden on Respondents: 553 (rounded).

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or

other forms of information technology. All comments received will be available for public inspection during regular business hours.

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

Dated: May 8, 2019.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2019–09839 Filed 5–13–19; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 9, 2019.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; New Executive Office Building, 725—17th Street NW, Washington, DC, 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received by June 13, 2019. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Almonds Grown in California (7 CFR part 981).

OMB Control Number: 0581–0242.

Summary of Collection: Marketing Order No. 981 (7 CFR part 981) regulates the handling of almonds grown in California and emanates from the Agricultural Marketing Agreement Act of 1937, (Act) Secs. 1–19, 48 Stat. 31, as amended (7 U.S.C. 601–674) to provide the respondents the type of service they request, and to administer the California almond marketing order program. The board has developed forms as a means for persons to file required information with the board relating to the treatment of almonds to reduce the potential for Salmonella bacteria prior to shipment.

Need and Use of the Information: Almond handlers are required to submit annual treatment plans to the board and inspection agency to ensure such plans are complete and auditable regarding how they plan to treat their almonds to reduce the potential for Salmonella. The plan will be approved by the Board and must address specific parameters for the handler to ship almonds. The Board also gathers information from entities interested in being almond process authorities that validate technologies, to accept and further process untreated almonds and entities interested in being auditors. The information collected would be used only by authorized representatives of USDA, including the Agricultural Marketing Service, Fruit and Vegetable Programs' regional and headquarters' staff, and authorized employees and agents of the board.

Description of Respondents: Business or other for-profit; Individuals.

Number of Respondents: 175.

Frequency of Responses: Recordkeeping; Reporting: Annually; On occasion.

Total Burden Hours: 4,200.

Kimble Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2019–09902 Filed 5–13–19; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Privacy Act of 1974; System of Records

AGENCY: Rural Housing Service, Rural Business-Cooperative Service, and Rural Utilities Service, USDA.

ACTION: Notice of modified system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974 as amended; Section 12204 of the Agricultural Act of 2014, Rural Development (RD) gives notice of its proposal to modify the system of records entitled USDA/RD–1 Current or Prospective Producers or Landowners, Applicants, Borrowers, Grantees, Tenants, and other participants in RD programs.

To communicate the revision to the USDA RD–1 Systems of Records Notice in which the addition of Routine Use 26 below is published.

However, this was not the only revised Routine Use—these were also revised:

1. Routine Use 21 was revised,
2. Routine Use 22 was added [OMB M–17–12 items],
3. In addition, Routine Uses 23 and 24 were renumbered to 24 and 25, respectively.

DATES: Comments must be received no later than June 13, 2019. This system of records will be effective June 13, 2019 unless RD determines otherwise.

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

- *You may submit written or electronic comments on this notice by any of the following methods:* Federal rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Submit written comments via the U.S. Postal Service to the Team Lead, Innovation Center, Regulations Management Team, Rural Development, Mail Stop 1522, 1400 Independence Ave. SW, Washington, DC 20250.
- *Hand Delivery/Courier:* Submit written comments via Federal Express Mail or other courier service requiring a street address to the Team Lead, Innovation Center, Rural Development, 1400 Independence Ave. SW, Washington, DC 20250, Mail Stop 1522.

FOR FURTHER INFORMATION CONTACT: For general questions, please contact:

Michael Gardner, RD Privacy Act Officer, 1400 Independence Ave. SW, MS 0707, Room 0168–S, Washington, DC 20250; Telephone: 202–692–0212.

For privacy issues, please contact: USDA Privacy Team, Information Security Center, Office of the Chief Information Officer, Department of Agriculture, 1400 Independence Avenue SW, Room 401–W, South Building, Washington, DC 20250; phone 202–205–0926 or at *USDAPrivacy@ocio.usda.gov.*

SUPPLEMENTARY INFORMATION: The Privacy Act of 1974, as amended (5 U.S.C. 552a), requires agencies to publish in the **Federal Register** notice of new or revised systems of records maintained by the agency. In accordance with the Office of Management and Budget (OMB) Circular A–130, Rural Development of the United States Department of Agriculture (USDA) is proposing to revise an existing Privacy Act system of records, which was last published in full on April 28, 2016 (FR 2016–09938).

The agency proposes to revise to USDA/RD–1 routine uses concerning:

a. The Agency also has revised Routine use 21 and added Routine use 22 to include the latest routine use from OMB M–17–12.

b. Routine use 23 renumbered to Routine use 24,

c. Routine use 24 is renumbered to Routine 25.

d. Added Routine use 26 added to allow records to be disclosed to financial institutions (including government sponsored enterprises), Federal agencies, and other entities for the purposes of enhancing program operations and performance through automated underwriting, credit scoring and risk management. Routine Use 26 will also apply to records already identified in USDA/RD–1.

SYSTEM NAME AND NUMBER:

USDA/RD–1 Current or Prospective Producers or Landowners, Applicants, Borrowers, Grantees, Tenants, and other participants in RD programs

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are in the local, area, or state office through which the financial assistance is sought or was obtained; in the Customer Service Center (CSC); and in the National Finance Office in St. Louis, Missouri. A state office version of the local or area office record may be in or accessible by the state office which is responsible for that local or area office. Correspondence regarding borrowers is located in the state and national office files.

A list of all state offices and any additional states offices for which an office is responsible is as follows:

Montgomery, AL
Palmer, AK
Phoenix, AZ
Little Rock, AR
Davis, CA
Lakewood, CO
Dover, DE (includes Maryland)
Gainesville, FL (includes U.S. Virgin Islands)
Athens, GA
Hilo, HI (includes Western Pacific Territories of American Samoa, Guam, and Commonwealth of the Marianas Islands, Federated States of Micronesia, Republic of Palau, and the Marshall Islands)
Boise, ID
Champaign, IL
Indianapolis, IN
Des Moines, IA
Topeka, KS
Lexington, KY
Alexandria, LA
Bangor, ME
Amherst, MA (includes Connecticut and Rhode Island)
East Lansing, MI
St. Paul, MN
Jackson, MS
Columbia, MO
Bozeman, MT
Lincoln, NE
Carson City, NV
Mt. Laurel, NJ
Albuquerque, NM
Syracuse, NY
Raleigh, NC
Bismarck, ND
Columbus, OH
Stillwater, OK
Portland, OR
Harrisburg, PA
San Juan, PR
Columbia, SC
Huron, SD
Nashville, TN
Temple, TX
Salt Lake City, UT
Montpelier, VT (includes New Hampshire)
Richmond, VA
Olympia, WA
Morgantown, WV
Stevens Point, WI
Casper, WY

The address of local, area, and state offices are listed in the telephone directory of the appropriate city or town under the heading, ''United States Government, Department of Agriculture, and Rural Development.'' The Finance Office and CSC are located at 4300 Goodfellow Blvd., St. Louis, MO 63120–0011.

SYSTEM MANAGER(S):

The Community Development Manager at the Local Office; the RD Manager at the Area Office; and the State Director at the State Office; the Deputy Chief Financial Officer in St. Louis, MO; and the respective Administrators in the National Office at the following addresses: Administrator, Rural Housing Service, USDA, 1400 Independence Avenue SW, Room 5014, South Building, Stop 0701, Washington, DC 20250–0701; Administrator, Rural Business-Cooperative Service, USDA, 1400 Independence Ave. SW, Rm. 5803–S, Stop 3201, Washington, DC 20250–3201; Administrator, Rural Utilities Service,—USDA 1400 Independence Ave. SW, Rm. 5135, Stop 1510, Washington, DC 20250–1510. Contact information can be found at *http://www.rd.usda.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Consolidated Farm and Rural Development Act of 1972, as amended; Section 12204 of the Agricultural Act of 2014 (Pub. L. 113–79); Agricultural Credit of 1961 & Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*); Housing Act of 1949 (42 U.S.C. 1471 *et seq.*); Section 901 of the Food Conservation, and Energy Act of 2008 (Pub L. 110–246); Rural Electrification and Telephone Service (7 U.S.C. 901 *et seq.*).

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is for Rural Development (RD) to maintain information that is used for current or prospective producers or landowners, applicants, borrowers, grantees, tenants, and other participants in RD programs designed to help improve the economy and quality of life in rural America. These financial systems support such essential public facilities and service as water and sewer systems, housing, health clinics, emergency service facilities, and electric and telephone services. Additionally, RD systems and feeder applications promote economic development by supporting loans to businesses through banks, credit unions, and community-managed lending pools. The suite of RD systems covered by this system of records is developed and maintained by the Chief Information Officer Washington DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or prospective producers or landowners, applicants, borrowers, grantees, tenants, and their respective household members, including members of associations and other participants in RD programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include individual's social security or employer identification

number, bank routing and account numbers; and their respective household members' characteristics, such as gross and net income, sources of income, capital, assets and liabilities, net worth, age, race, number of dependents, marital status, reference material, farm or ranch operating plans, and property appraisal. The system also tracks credit reports and personal references from credit agencies, lenders, businesses, and individuals. In addition, a running record of observation concerning the operations of the person being financed is included. A record of deposits to and withdrawals from an individual's supervised bank account is also contained in those files where appropriate. In some local offices, this record is maintained in a separate folder containing only information relating to activity within supervised bank accounts. Some items of information are extracted from the individual's file and placed in a card file for quick reference.

RECORD SOURCE CATEGORIES:

Information in this system comes primarily from credit reports. Personal references come primarily from current or prospective producers or landowners, applicants, borrowers, grantees, tenant, credit agencies, and creditors.

ROUTINE USES OF RECORDS MAINTAINED IN THE GROUP OF APPLICATIONS, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records information contained in this system may be disclosed outside USDA as a routine use pursuant to 5 U.S.C. a(b)(3) as follows:

1. When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate agency, whether Federal, foreign, state, local, or tribal, or other public authority responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative or prospective responsibility of the receiving entity.

2. To a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained.

3. RD will provide information from these systems to the U.S. Department of the Treasury and to other Federal agencies maintaining debt servicing centers, in connection with overdue debts, in order to participate in the Treasury's Offset Program as required by the Debt Collection Improvements Act, Public Law 104–134, section 31001.

4. Disclosure to RD of name, home addresses, and information concerning default on loan repayment when the default involves a security interest in tribal allotted or trust land. Pursuant to the Cranston-Gonzales National Affordable Housing Act of 1990 (42 U.S.C. 12701 *et seq.*), liquidation may be pursued only after offering to transfer the account to an eligible tribal member, the tribe, or the Indian housing authority serving the tribe(s).

5. Disclosure of names, home addresses, social security numbers, and financial information to a collection or servicing contractor, financial institution, or a local, state, or Federal agency, when RD determines such referral is appropriate for servicing or collecting the borrower's account or as provided for in contracts with servicing or collection agencies.

6. To a court or adjudicative body in a proceeding when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity; or (c) any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or (d) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

7. Disclosure of names, home addresses, and financial information for selected borrowers to financial consultants, advisors, lending institutions, packagers, agents, and private or commercial credit sources, when RD determines such referral is appropriate to encourage the borrower to refinance his RD indebtedness as required by Title V of the Housing Act of 1949, as amended (42 U.S.C. 1471), or to assist the borrower in the sale of the property.

8. Disclosure of legally enforceable debts to the Department of the Treasury, Internal Revenue Service (IRS), to be offset against any tax refund that may become due the debtor for the tax year in which the referral is made, in accordance with the IRS regulations at 26 CFR 301.6402–6T, Offset of Past Due Legally Enforceable Debt Against Overpayment, and under the authority contained in 31 U.S.C. 3720A.

9. Disclosure of information regarding indebtedness to the Defense Manpower Data Center, Department of Defense, and the United States Postal Service for the purpose of conducting computer matching programs to identify and locate individuals receiving Federal salary or benefit payments and who are delinquent in their repayment of debts owed to the U.S. Government under certain programs administered by RD in order to collect debts under the provisions of the Debt Collection Act of 1982 (5 U.S.C. 5514) by voluntary repayment, administrative or salary offset procedures, or by collection agencies.

10. Disclosure of names, home addresses, and financial information to lending institutions when RD determines the individual may be financially capable of qualifying for credit with or without a guarantee.

11. Disclosure of names, home addresses, social security numbers, and financial information to lending institutions that have a lien against the same property as RD for the purpose of the collection of the debt. These loans may be under the direct and guaranteed loan programs.

12. Disclosure to private attorneys under contract with either RD or with the Department of Justice for the purpose of foreclosure and possession actions and collection of past due accounts in connection with RD.

13. To the Department of Justice when: (a) The agency or any component thereof; or (b) any employee of the agency in his or her official capacity where the Department of Justice has agreed to represent the employee; or (c) the United States Government, is a party to litigation or has an interest in such litigation, and by careful review, the agency determines that the records are both relevant and necessary to the litigation and the use of such records by the Department of Justice is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

14. Disclosure of names, home addresses, social security numbers, and financial information to the Department of Housing and Urban Development for the purpose of evaluating a loan applicant's creditworthiness, information that will allow for the pre-screening of applicants through the Credit Alert Verification Reporting

System (CAIVRS) computer matching program. An applicant shall be pre-screened for any debts owed or loans guaranteed by the Federal government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Federal government. Authorized employees of, and approved private lenders acting on behalf of, the Federal agencies participating in the CAIVRS computer matching program will be able to search the CAIVRS database.

Explanatory Text: Credit Alert Verification Reporting System (CAIVRS) is a Federal government database of delinquent Federal debtors that when reviewed, allows Federal agencies to reduce the risk to Federal loan and loan guarantee programs. CAIVRS alerts participating Federal lending agencies when an applicant for credit benefits has a Federal lien, judgment, or a Federal loan that is currently in default or foreclosure or has had a claim paid by a reporting agency. CAIVRS allows authorized employees of participating Federal agencies to access a database of delinquent Federal borrowers for the purpose of pre-screening direct loan applicants for credit worthiness and also permits approved private lenders acting on behalf of the Federal agency to access the delinquent borrower database for the purpose of pre-screening the credit worthiness of applicants for federally guaranteed loans. CAIVRS authority derives from the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503) as amended, Office of Management and Budget (OMB) Circulars A–129 (Managing Federal Credit Programs) and A–70 (Policies and Guidelines for Federal Credit Programs), the Budget and Accounting Acts of 1921 and 1950, as amended, the Debt Collection Act of 1982, as amended, the Deficit Reduction Act of 1984, as amended, and the Debt Collection Improvement Act of 1996, as amended.

15. Disclosure of names, home addresses, social security numbers, and financial information to the Department of Labor, State Wage Information Collection Agencies, and other Federal, State, and local agencies, as well as those responsible for verifying information furnished to qualify for Federal benefits, to conduct wage and benefit matching through manual and/or automated means, for the purpose of determining compliance with Federal regulations and appropriate servicing actions against those not entitled to program benefits, including possible recovery of improper benefits.

16. Disclosure of names, home addresses, and financial information to financial consultants, advisors, or underwriters, when RD determines such referral is appropriate for developing packaging and marketing strategies involving the sale of RD loan assets.

17. Disclosure of names, home and work addresses, home telephone numbers, social security numbers, and financial information to escrow agents (which also could include attorneys and title companies) selected by the applicant or borrower for the purpose of closing the loan.

18. Disclosure to Health and Human Services (HHS) parent locator system for finding parents who do not pay child support: The name and current address of record of an individual may be disclosed from this system of records to the parent locator service of the Department of HHS or authorized persons defined by Public Law 93–647, 42 U.S.C. 653.

19. To agency contractors, grantees, experts, consultants or volunteers who have been engaged by the agency to assist in the performance of a service related to this system of records and who need to have access to the records to perform the activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).

20. Disclosure to customer service agents for training and evaluation purposes. Information is collected during calls made by the client to the CSC Customer Service Section to discuss questions or concerns pertaining to their mortgage account(s) with RD. The information discussed during the call to the CSC help desk is captured and used for training and evaluation purposes to ensure proper procedures are being followed and accurate information is provided when assisting the client.

21. To appropriate agencies, entities, and persons when (1) RD suspects or has confirmed that there has been a breach of the system of records,· (2) RD has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, RD (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with RD efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm'' suspected or confirmed compromise and prevent, minimize, or remedy such harm.

22. To another Federal agency or Federal entity, when RD determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

23. To comply with Federal Funding Accountability and Transparency Act (FFATA) and similar statutory requirements for public disclosure in situations where records reflect loans, grants, or other payments to members of the public: USDA will disclose information about individuals from this system of records in accordance with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282; codified at 31 U.S.C. 6101, *et seq.*); section 204 of the E-Government Act of 2002 (Pub. L. 107–347; 44 U.S.C. 3501 note), and the Office of Federal Procurement Policy Act (41 U.S.C. 403 *et seq.*), or similar statutes requiring agencies to make available publicly information concerning Federal financial assistance, including grants, sub grants, loan awards, cooperative agreements and other financial assistance; and contracts, subcontracts, purchase orders, task orders, and delivery orders.

24. To the National Archives and Records Administration for to the National Archives and Records Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

25. To the Department of the Treasury for the purpose of identifying, preventing, or recouping improper payments to an applicant for, or recipient of, Federal funds, including funds disbursed by a State in a State-administered, federally funded program, information that will allow for pre-payment eligibility review of a loan applicant through the Do Not Pay computer matching program. Authorized employees of, and approved private lenders acting on behalf of, the Federal agencies participating in the Do Not Pay computer matching program will be able to search the Do Not Pay database. The disclosure may include applicant's name, home address, Social Security Number, income/financial data, date of birth, personal telephone number, and personal email address.

Explanatory Text: To help eliminate waste, fraud, and abuse in Federal programs, Federal agencies are to focus on preventing payment errors before they occur. The purpose of the

Department of the Treasury's Do Not Pay program is to reduce improper payments by intensifying efforts to eliminate payment error, waste, fraud, and abuse in the major programs administered by the Federal Government, while continuing to ensure that Federal programs serve and provide access to their intended beneficiaries. Federal agencies shall thoroughly review the Do Not Pay computer matching database, to the extent permitted by law to determine applicant eligibility before the release of any Federal funds. By checking the Do Not Pay database before making payments, Federal agencies can identify ineligible recipients and prevent certain improper payments from being made. The Do Not Pay program authority derives from the Improper Payments Elimination and Recovery Improvement Act of 2012 (Pub. L. 112–248).

26. To financial institutions (including government sponsored enterprises), Federal agencies, and other entities for the purposes of enhancing program operations and performance through automated underwriting, credit scoring and risk management.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a (b) (12): Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a (f)) or the Federal Claims Collection Act (31 U.S.C. 3701(a) (3)).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained in file folders at the local, area, state, and national offices. All records are converted to electronic format and stored on a USDA managed certified and accredited storage repository. Once agency employees convert the paper documents to digital records, verify that the digital record is readable and successfully ported to the imaging repository the manual documents are destroyed in compliance with RD regulation (shredding). Other program imaging repositories are utilized to allow multi-point access to electronic records, but the manual documents are retained securely in the local office until such time as the account is considered closed per Rural Development Regulation 2033–A. At that time, the documents/case files are destroyed in a manner as outlined in RD regulation. If the office cannot accommodate proper, manual file retention standards (inadequate space to secure and house documents/files that require retention), inactive documents/case files (*i.e.,* charge-offs, pay-offs, denials, withdrawn) can be retired to the Federal Records Center. Any records shipped to the Center for retention must be clearly inventoried and marked with a destroy-by date. The destroy date is determined by the record type after it is closed (*e.g.,* loss to the government retention is 7 years after case is closed). The retention schedule can be found at RD 2033–A and the Operational Records Manual. For further information contact the RD Records Officer. If closed/inactive files are retained at the local office until such time as they are eligible for destruction, they are stored in a secured location.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are indexed by name, identification number, and type of loan or grant. Data may be retrieved from the paper records or the electronic storage. All RD state and field offices as well as the financial office and the Customer Service Center (CSC) have the telecommunications capability available to access this subset of data.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained for Financial Systems under National Archives and Records Administration General Schedule 7.

Records are maintained subject to the Federal Records Disposal Act of 1943 (44 U.S.C. 33), and as amended in accordance with RD disposal schedules. The local, area, state, and national offices dispose of records by shredding, burning, or other suitable disposal methods after established retention periods have been fulfilled. (Destruction methods may never compromise the confidentiality of information contained in the records.) Applications, including credit reports and personal references, which are rejected, withdrawn, or otherwise terminated are kept in the local, area, or state offices for two full fiscal years and one month after the end of the fiscal year in which the application was rejected, withdrawn, canceled, or expired. If final action was taken on the application, including an appeal, investigation, or litigation, the application is kept for one full fiscal year after the end of the fiscal year in which final action was taken.

The records, including credit reports, of borrowers who have paid or otherwise satisfied their obligation are retained in the local, area, or state office for one full fiscal year after the fiscal year in which the loan was paid in full. Correspondence records at the National Office which concern borrowers and applicants are retained for three full fiscal years after the last year in which there was correspondence.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS

Paper records are kept in locked offices at the Local, Area, State, and National Offices. For electronic records and an online retrieval system at the Finance Office access is restricted to authorize Rural Development personnel. A system of operator and terminal passwords and code numbers is used to restrict access to the online system. Passwords and code numbers are changed as necessary.

The records are protected by the confidentiality requirements of the USDA Office of the Chief Information Officer (OCIO) Cyber Security Manuals and the provisions of the Privacy Act. Only authorized USDA employees will have access to the records in this system on a need to know basis. Role based access controls are used and the systems are accessible via the USDA Intranet. Only authorized USDA personnel will have access to these records. The systems covered by this notice have been categorized as having a Moderate security categorization impact as identified in Federal Information Processing Standard (FIPS) 199, Standards for Security Categorization of Federal Information and Information Systems. The security controls implemented within the systems will correspond with those published in the National Institute of Standards and Technology (NIST) Special Publication 800–53, Recommended Security Controls for Federal Information Technology Systems for a Moderate impact system.

Users are only granted system access upon successful completion of information security training and each user is supplied with a unique and strong user-id and password. The user roles are restrictive and based on the principle of least privilege allowing for adequate performance of job functions and access to information is based on a need to know.

Due to the financial nature of the systems covered by this notice, the systems also adhere to the security controls identified in the Federal Information Security Control Audit Manual (FISCAM). The mandatory requirements of FIPS 199 and FIPS 200, Minimum Security Requirements for Federal Information and Information Systems, support the Federal Information Security Management Act (FISMA) and the FISCAM supports the mandated Office of Management and

Budget (OMB) Circular A–123, Management of Internal Controls.

Moreover, specific USDA security requirements are adhered to through the USDA Cyber Security Manuals including but not limited to: *DM3545–000, Personnel Security,* and DM3510–001, Physical Security Standards for Information Technology Restricted Space.

RECORD ACCESS PROCEDURES:

Any individual may request information regarding this system of records or determine whether the system contains records pertaining to him/her, from the appropriate System Manager. If the specific location of the record is not known, the individual should address his or her request to: Rural Development, Freedom of information Officer, United States Department of Agriculture, 1400 Independence Avenue SW, Stop 0742, and Washington, DC 20250–0742.

A request for information pertaining to an individual must include a name; an address; the RD office where the loan or grant was applied for, approved, and/or denied; the type of RD program; and the date of the request or approval.

CONTESTING RECORD PROCEDURES

See ''Record Access Procedure'' above.

NOTIFICATION PROCEDURE:

See ''Record Access Procedure'' above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

System of Records; USDA/Rural Development-1 Current or Prospective Producers or Landowners, Applicants, Borrowers, Grantees, Tenants, and Other Participants in RD Programs A Notice by the Rural Housing Service, the Rural Business-Cooperative Service, and the Rural Utilities Service Published to the **Federal Register** 04/28/2016.

Joel C. Baxley,

Acting Assistant to the Secretary, Rural Development.

[FR Doc. 2019–09874 Filed 5–13–19; 8:45 am]

BILLING CODE 3410–XT–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Ohio Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Ohio Advisory Committee (Committee) will hold a meeting via teleconference on Wednesday June 5, 2019, from 3–4 p.m. EDT for the purpose of reviewing received testimony and discussing next steps in developing the Committee's final report and recommendations to the Commission on education funding in the state.

DATES: The meeting will be held on Wednesday June 5, 2019, at 3:00 p.m. EDT.

Public Call Information: Dial: 877–264–2842, Conference ID: 8155378.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion. This meeting is available to the public through the above listed toll free number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit Office, U.S. Commission on Civil Rights, 230 S. Dearborn, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324, or emailed to Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Ohio Advisory Committee link. Persons interested in the work of this Committee are also directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit office at the above email or street address.

Agenda

Welcome and Roll Call
Discussion: Education Funding in Ohio
Public Comment
Adjournment

Dated: May 9, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–09865 Filed 5–13–19; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Mississippi Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Mississippi Advisory Committee (Committee) will hold a meeting on Thursday May 23, 2019, from 9:00 a.m.–4:00 p.m. CDT for the purpose of hearing public testimony on civil rights and prosecutorial discretion in the state.

DATES: The meeting will be held on Thursday May 23, 2019, from 9:00am–4:00pm CDT.

ADDRESSES: The Hilton Jackson, 1001 East County Line Road, Jackson, MS 39211.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION:

Press Release: https://www.usccr.gov/press/2019/05-08-MS-Prosecutorial-Discretion-PR.pdf.

Informational Flyer: https://www.usccr.gov/press/2019/05-08-MS-Prosecutorial-Discretion-Flyer.pdf.

This meeting is free and open to the public. An open comment period will be provided beginning at 3pm to allow members of the public to make a statement as time allows. Persons with disabilities requesting reasonable

accommodations should contact the Commission's Regional Programs Unit at 312–353–8311 at least ten days prior to the meeting.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit Office, U.S. Commission on Civil Rights, 230 S. Dearborn, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324, or emailed to Corrine Sanders at *csanders@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Mississippi Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit Office at the above email or street address.

Agenda

Opening Remarks and Introductions (9:00 a.m.–9:15 a.m.)
Panel 1: Community & Advocates (9:15 a.m.–10:45 a.m.)
Panel 2: Defense & Public Aid Attorneys (11:00 a.m.–12:15 p.m.)
Break (12:15 p.m.–1:30 p.m.)
Panel 3: Judicial Officials & Prosecutors (1:30 p.m.–2:45 p.m.)
Open Public Comment Session (3:00 p.m.–4:00 p.m.)
Closing Remarks (4:00 p.m.)

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances of panelist availability and hearing planned public testimony.

Dated: May 9, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–09862 Filed 5–13–19; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Nebraska Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Nebraska Advisory Committee (Committee) will hold a public meeting to hear testimony on civil rights and prison conditions for individuals with mental health conditions in the state.

DATES: The meeting will take place on Thursday June 13, 2019, from 9:00 a.m.–4:00 p.m. CDT.

ADDRESSES: Lincoln Marriott Cornhusker Hotel, 333 S 13th Street, Lincoln, NE 68508.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or (312) 353–8311.

SUPPLEMENTARY INFORMATION: This meeting is free and open to the public. An open comment period will be provided beginning at 3 p.m. to allow members of the public to make a statement to the Committee as time allows. Persons with disabilities requesting reasonable accommodations should contact the Commission's Regional Programs Unit at 312–353–8311 at least 10 days prior to the meeting.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit, U.S. Commission on Civil Rights, 230 S Dearborn, Suite 2120, Chicago, IL 60604. They may also be delivered at the June 13 public meeting, faxed to the Commission at (312) 353–8324, or emailed to Corrine Sanders at *csanders@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Nebraska Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

Opening Remarks and Introductions (9:00 a.m.–9:15 a.m.)
Panel 1: Legal & Advocates (9:15 a.m.–10:45 a.m.)
Panel 2: Mental Health & Community (11:00 a.m.–12:15 p.m.)
Break (12:15 p.m.–1:30 p.m.)
Panel 3: Government (1:30 p.m.–2:45 p.m.)
Open Public Comment (3:00 p.m.–4:00 p.m.)
Closing Remarks (4:00 p.m.)

Dated: May 9, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–09933 Filed 5–13–19; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Florida Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Florida Advisory Committee (Committee) will hold a meeting on Thursday, May 16, 2019, at 2.00 p.m. (EST) for the purpose of planning future public meetings on voting rights in the state.

DATES: The meeting will be held on Thursday, May 16, 2019, at 2:00 p.m. (EST).

Public Call Information: Dial: 877–260–1479, Conference ID: 5579358.

FOR FURTHER INFORMATION CONTACT: Jeff Hinton, DFO, at *jhinton@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the toll-free call-in number dial: 877–260–1479, Conference ID: 5579358. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling

the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Written comments may be mailed to the Regional Program Unit Office, U.S. Commission on Civil Rights, 230 S. Dearborn St., Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324 or may be emailed to the Regional Director, Jeff Hinton at *jhinton@usccr.gov.* Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Florida Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Program Unit at the above email or street address.

Agenda

Welcome and Introductions
Discussion: Voting Right Issues in Florida
Public Comment
Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances of the federal government shutdown.

Dated: May 9, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–09897 Filed 5–13–19; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Montana Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a meeting of the Montana Advisory Committee (Committee) to the Commission will be held at 12:00 p.m. (Mountain Time) Thursday, May 23, 2019. The purpose of the meeting is for the Committee to finalize the Bordertown Discrimination Report.

DATES: The meeting will be held on Thursday, May 23, 2019 at 12:00 p.m. MT.

FOR FURTHER INFORMATION CONTACT: David Barreras at *dbarreras@usccr.gov* or (312) 353–8311.

SUPPLEMENTARY INFORMATION:

Public Call Information: Dial: 800–667–5617; Conference ID: 2855115.

This meeting is available to the public through the following toll-free call-in number: 800–667–5617, conference ID number: 2855115. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012. They may be faxed to the Commission at (213) 894–0508, or emailed Angelica Trevino at *atrevino@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (213) 894–3437.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https://facadatabase.gov/committee/meetings.aspx?cid=259.* Please click on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome and Rollcall
II. Discussion
III. Next Steps
IV. Public Comment
V. Adjournment

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances of the federal government shutdown.

Dated: May 9, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–09861 Filed 5–13–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Office of the Secretary

RIN 0690–ZA03

Request for Information on Commercial Capabilities in Space Situational Awareness Data and Space Traffic Management Services

AGENCY: Office of Space Commerce, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice to extend public comment period.

SUMMARY: On April 11, 2019, the U.S. Department of Commerce (Department), via the Office of Space Commerce, published a notice seeking information on space situational awareness (SSA) data and the space traffic management (STM) services, opening a public comment period through May 13, 2019. This notice announces an extension of the public comment period until May 23, 2019.

DATES: Comments and information on SSA data and STM services must be received by 5:00 p.m. Eastern Standard Time, May 23, 2019.

ADDRESSES: The public may submit written comments on issues addressed in this Notice by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=DOC-2019-0001,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Patrick Sullivan, U.S. Department of Commerce, 1401 Constitution Avenue NW, Room 53027, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Patrick Sullivan, U.S. Department of Commerce, 1401 Constitution Avenue NW, Room 53027, Washington, DC 20230; *psullivan@doc.gov;* (202) 482–6167.

SUPPLEMENTARY INFORMATION: On April 11, 2019, the Department, via the Office of Space Commerce, published a notice

in the **Federal Register** (84 FR 14645) seeking input from interested parties on: (1) Specific capabilities commercial entities might currently and in the future provide through an open architecture data repository to the public to enhance the space situational awareness (SSA) data and the space traffic management (STM) services the U.S. government currently provides; (2) SSA, STM, and orbital debris mitigation best practices; and (3) perspectives on the appropriate regulatory structures the Department should adopt to drive the development and responsible use of such SSA and STM enhancements in order to protect national interests and further encourage U.S. commercial space investment.

This notice announces an extension of the public comment period from May 13, 2019 to May 23, 2019. The comment period is being extended to allow the public additional time to file comments given the diverse types of information sought.

Dated: May 9, 2019.

Patrick Sullivan,

Deputy Director, Regulation and Policy, Office of Space Commerce, U.S. Department of Commerce.

[FR Doc. 2019–09896 Filed 5–13–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–29–2019]

Foreign-Trade Zone (FTZ) 18—San Jose, California; Notification of Proposed Production Activity; Lam Research Corporation (Wafer Fabrication Equipment, Subassemblies and Related Parts), Fremont, Livermore and Newark, California

Lam Research Corporation (Lam) submitted a notification of proposed production activity to the FTZ Board for its facilities in Fremont, Livermore and Newark, California. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on April 25, 2019.

Lam already has authority to produce wafer manufacturing equipment within Subzone 18F. The current request would add a finished product and foreign status materials/components to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status materials/components and specific finished product described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Lam from customs duty payments on the foreign-status materials/components used in export production. On its domestic sales, for the foreign-status materials/components noted below and in the existing scope of authority, Lam would be able to choose the duty rates during customs entry procedures that apply to parts and assemblies of semiconductor manufacturing equipment (duty-free). Lam would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The materials/components sourced from abroad include: Diluted hydrogen gas; freon gas; ammonia hydroxide solutions; potassium phosphate buffer solutions; sodium bicarbonate buffer solutions; hydrogen peroxide; antifoam emulsions; calcium glucomate; caulking compounds; polyvinyl chloride cements; mineral oils; teflon greases and similar synthetic oils; thermal joint compounds; petroleum-based greases and similar lubricants; scouring pastes and powders; retail-sale sealants, glues and pastes; polymer-based adhesives; industrial sealants, glues and pastes; carrier films; toner cartridges; organic solvents; sealants with activators; silicon or germanium wafers and partial wafers; PH buffer solutions and litmus papers; fluorine-based coolants; fluorinated and other polyether-based lubricants; epoxy resins; silicone cements and fillers; polyethylene tubes, pipes and hoses; polypropylene tubing; polyvinyl chloride tubing; plastic tubing; flexible plastic tubes, pipes and hoses; flexible plastic tubing with and without fittings; plastic tube fittings; electrical tapes; foam tapes; reflective tapes; scotch tapes, packing tapes and similar tapes; plastic labels; plastic panels, plates and structural components; polymer plastic signs and plates; plastic cutting sheets; polycarbonate windows; plastic shims and spacers; polyester-plastic shims; teflon wraps and pads; foam-block silicon adhesives; protection and insulation pads and wipes of polyurethane plastics; plastic film sheets and foam strips; plastic templates; flexible plastic panels, plates and structural components; rigid plastic panels, plates and structural components; plastic boxes and crates; polyethylene bags and packing materials; other plastic bags and packaging materials; polypropylene and fluoropolymer-plastic reservoirs and tanks; plastic caps; plastic packing materials; plastic ductwork; heavy duty plastic gloves; plastic aprons and similar protective clothing; plastic handles and levers; plastic furniture hinges, mounts, latches and brackets, hole plugs, screw pins and similar fasteners, templates for facilities layout, tinting lenses, and wafer clamps; plastic clips and similar attaching devices; plastic O-rings, gaskets, washers and seals; plastic timing belts; retaining rings of rubber; soft rubber tubing; unreinforced rubber tubing with fittings; reinforced rubber tubing without fittings; soft rubber tubing with fittings; vulcanized rubber belts; transmission belts; disposable gloves; non-disposal gloves; rubber gaskets, washers and seals; rubber caps; rubber sheets, grommets, bladders, collars, and O-rings; plastic tool containers; strain relief caps; plastic case covers; silicone plastic tablet covers; wooden crates; tissues and cleansing wipes; paperboard and cardboard packaging materials; paper labels; paperboard labels; paper gaskets, washers and other seals; technical manuals, procedures and work instructions; schematics, diagrams and similar technical drawings; right to use documentation; certificates, brochures and other work documents; velcro tapes; nylon lines; duct tapes; nylon support slings; face shields, protective caps and hard hats; abrasive pads, disks and strips; graphite and carbon fiber disks; aluminum oxide or yttria oxide porcelain or china ceramic rings, disks, plates, liners, shields, guards, end effectors, plugs, screws, components and accessories; aluminum oxide or yttria oxide ceramic rings, disks, plates, liners, shields, guards, end effectors, plugs, screws, components and accessories; slurry troughs and similar ceramic dispensers; light pipes; safety glass windows; lamp bulbs; reflectors and collimators; fused silica and quartz disks, windows, liners, rings, tubes holders, funnels and components; beakers and similar equipment for conveying chemicals; viewports; fiberglass gaskets, spacers and fasteners; fiberglass; rings; fiberglass washers; quartz reactor tubes; sapphire pins, balls, shims, windows, viewports, liners, tubes, components and accessories; steel pipes; iron fittings; cast steel fittings; stainless steel flanges; stainless steel elbows, pipe and sleeves; stainless steel butt weld fittings; non-cast stainless steel fittings for tubes and pipe; other fittings of zinc-coated carbon steel; stainless steel canisters and chemical tanks; rope winches; braided steel support cables and wires; steel roller chains; steel link chains; steel guard chains, driver chains, roller

chains and links; steel chain links; belt chains; steel tie down straps; steel pins; steel eyebolts; steel grub screws; steel screws and springs; steel socket head screws; steel nuts; threaded steel fasteners; steel spring washers; iron and steel washers; steel retaining rings; unthreaded steel fasteners; steel leaf springs; steel springs; steel gas springs, wave springs, plunger springs and compression springs; cast steel springs; steel wire belts and inserts; steel bushings, collars, blocks, rings, seals and plates; copper bus bars, ground bars and rods; copper conductor bars; copper tubing; copper pipe fittings; copper alloy for tubes and pipes; copper washers; small brass screws; copper threaded fittings; copper straps, anodes, sleeves, shields, gaskets, pins and screens; nickel screws; nickel straps, anodes, sleeves, shields, gaskets, pins and screens; aluminum top hat rails and clips; aluminum bus bars, ground bars and rods; aluminum nameplates; aluminum rails and rods; aluminum tape; aluminum labels; aluminum tubing; aluminum alloy tubing; aluminum fittings for tubes and pipes; aluminum fasteners; aluminum screws; aluminum vacuum port screens; aluminum covers, spinners, sleeves and screens; zinc fittings, screws, fasteners and back shells; tin anodes; tin pellets; titanium pins and screws; jab saws; saw blades; pliers; knockout punches and hose cutters; hand-operated adjustable flat spanners and torque wrenches; hand operated adjustable spanners and wrenches; socket wrenches; drills; hammers; screwdrivers; extraction tools, debar tools, epoxy removal tips and install tools; grease guns; metal clamps; insertion and extraction tool sets; helicoil and pipe tapping tools; manual drills; drill bits; retractable knives; scissors; padlocks; locks; metal latches with hooks; keys; aluminum alloy, 304 or 326 stainless steel or brass hinges and hinge parts; zinc plated carbon steel, aluminum alloy, 304 or 316 stainless steel or brass casters; metal, hardware type brackets and mounts; metal fittings; iron, steel, aluminum or zinc mountings, fittings, straps, clamps, brackets levelers struts and valves; base metal brackets; braided steel tubing and hoses; braided metal tubing; air cylinders and other pneumatic power engines; non-linear acting pneumatic power engines; magnetically actuating cylinders; pneumatic engine parts; shock absorbers; diaphragm pumps; hydraulic fluid pumps; centrifugal pumps; syringe and other pumps; centrifugal pump parts; vacuum pumps; cryo-compressors; fans; condensers and compressors; fan parts; heat exchange units; evaporators; heaters; heat exchange unit parts; heater parts; water filters; liquid filtration devices; air and gas filtration devices; filter parts; balancing scales; weight measurement equipment; weights; fire suppression and extinguishing systems; fluid distribution system nozzles and orifices; chemical applicators; nozzles and orifices; hoists; scissor jacks; lift and handling fixtures; housing and plain shaft bearings; lift fixtures and parts; calibration disks; barcode and thermal printers; slug buster punches; equipment chucks and fixtures; electric drills; punches and blades; helicoil repair kits; electric pipe and cable cutters; laptop computers; computers; computer keyboards and peripherals; keyboards; hard disk and optical drives; peripheral interface hardware for computers; hubs; interface and input/output cards; optical readers; tablet docking stations; printed circuit assemblies; teaching pendants and terminals; plates, pads, lift fixtures and related components; pressure reducing valves; airflow control valves; check valves; safety valves; brass bellows, butterfly, ball, vacuum and other manual valves; fluorocarbon, polyether and polyvinyl chloride bellows, butterfly, ball, vacuum and other manual valves; steel bellows, butterfly, ball, vacuum and other manual valves; solenoid, liquid control, electric, automatic and pneumatic valves; valve parts; ball bearings; tapered roller bearings; roller bearings; needle roller bearings; cylindrical roller bearings; roller bearings, balls screws and radial ball bearings; shafts, rollers, blocks and balls for bearings; bearing rings; transmission shafts; housed and plain shaft bearings; fixed, multiple and variable ratio speed changers, ball or roller screws; pulleys; shaft couplings; steel gear parts; mechanical gaskets of nickel, aluminum foil, tin/lead-plated beryllium copper, aluminum alloy or 316 stainless steel; mechanical seals of nickel, aluminum foil, tin/lead-plated beryllium copper, aluminum alloy or 316 stainless steel; gaskets of nickel, aluminum foil, tin/lead-plated beryllium copper, aluminum alloy or 316 stainless steel; chemical/mechanical planarization and other wafer surface modification equipment; machines for semiconductor production; tools and process modules for chemical vapor deposition; tools and process modules for physical vapor deposition; tools and process modules for plasma dry etch of materials; tools and process modules for plasma etch of bevel edges; tools and process modules for stripping of photo resist material; tools and process modules for ultraviolet thermal processing; tools and process modules for wafer cleaning; etch systems; conductor material deposition process modules; transport modules; wafer transport robots; mask manufacturing and electronic circuit assembly machines; baffles; bellows; bezels; gas and fluid distribution tubing; pneumatic harnesses; drive units for process modules; fluid and gas distribution modules and assemblies; fluid management tanks; plasma sources; printed circuit board assemblies and control assemblies; radio frequency and high frequency coils, electrodes and related parts; radio frequency generators and related structural components; radio frequency matching networks and related structural components; silicon rings; structural elements of semiconductor manufacturing equipment and transport modules; wafer chucks and related parts; mechanical brakes; electric motors; universal AC/DC motors >37.5 watts; DC motors with output ≤750W; DC motors with output >750W and ≤75kW; AC motors with output >74.6W and ≤746W; AC motors with output ≤750W; AC motors with output >750W and ≤4.92 kW; pistons, guards, and similar components; lamp ballasts; electrical transformers not exceeding 1 kVA; electrical transformers with output of 1 kVA to 16 kVA; electrical transformers with output >16 kVA up to 500 kVA; power supplies and static converters; inductors; parts of power supplies; magnets; magnetic brakes; electro-magnetic load coil and sensor magnets; manganese dioxide batteries; lithium batteries; off-the-shelf batteries; lead storage batteries; nickel metal hybrid batteries; portable electric lamps; induction heaters; other heaters; heating elements and induction heaters; resistive heating elements; thermofoil; network equipment; input/output cards and panels; load cell, servo and proximity amplifiers; digital video recorders; training video tapes; unrecorded magnetic media; DVDs; software; flash memory cards; badges; transponder readers; video cameras; cathode ray tube monitors; LCD computers; LCD color flat screen monitors; general use motors; camera covers and holders; smoke detectors and sensors; LED indicators; electric sound or visual signaling apparatus; sensors, lenses, frames and other parts of smoke detectors; tantalum fixed capacitors; aluminum electrolytic fixed capacitors; single layer ceramic dielectric fixed capacitors; multi-layer fixed capacitors; dielectric fixed capacitors; fixed electrical capacitors; variable and

adjustable capacitors; tube holders and mountings; composition or film-type fixed attenuators; resistors; fixed carbon resistors and attenuators; electrical variable resistors other than potentiometers; potentiometers; raw circuit boards; ion bars; high and low amp fuses made of glass and other materials; high and low amp circuit breakers; circuit breakers; electromechanical relays with low amp and low volt contactors; electromechanical relays with low amp and high volt contactors and high volt and high amp solid state relays; switches; lamp holders and contactors; connectors; assemblies; converters; receptacle panels; interlock converters, electrical ducts and lock outs; terminals and connectors; connectors for optical cables; conduit assemblies, back shells, buses and similar connectors; electrical terminals and terminal blocks; control apparatus, assemblies, couplers, cards, valve cards, load ports, terminal boards, programmable controllers and motion controllers; chassis, panels and boards for power distribution modules and similar controllers; supports, ferrules, fuse holders and similar parts of connectors; connector sockets; tungsten lamps; incandescent lamps and bulbs of a power >15W − <=150W; incandescent lamps and bulbs of a power >=12V − <14V; fluorescent lamps; discharge lamps other than ultraviolet lamps; arc lamps; ultraviolet lamps; LED lamps; electrical filament and discharge lamp parts; magnetrons and magnetron tubes; electromagnetic interference shield rings; diodes; transistors; power block modules; LED lamps, oscillators, photosensors and fiber optic sensors; crystal oscillators; photosensor parts; processor and logic controller integrated circuits; memory cards; integrated circuit amplifiers; other non-processor, non-memory integrated circuits; electrolysis equipment; insulated electrical cable wire; coaxial cables; cables with connectors; USB, ethernet and similar telecommunications cables with connectors; insulated wire cables without connectors; cables for voltage exceeding 1,000V; fiber optic cables; graphite electrodes; quartz insulators and insulator elements; ceramic insulators; electrical insulators; ceramic insulator fittings; plastic insulator fittings; quartz rings; electric filter devices; dollies; optical fibers; optical lenses and mirrors; optical sights; optical filters and windows; mounted windows and lenses; prisms; protective eyeglass frames; goggles and similar protective spectacles; compound optical microscopes; lasers for metrology and endpoint systems; flat panel displays; optical amplifiers; optical light guide lenses; non-electric levels; calipers and linear gauges; length measuring hand instruments; caliper clamps and heads; linear gauge clamps and heads; syringes; face shields with respirators; thermometers, thermocouples and temperature gauges; temperature monitors and hydrometers; thermocouple sensors and adaptors; flow meters, level gauges and similar fluid measuring equipment; electrical pressure checking and measurement equipment; mechanical pressure checking and measurement equipment; interferometers and hydrogen sensors; leak sensors; diaphragms, guards, adapters, gauges, vacuum filters and similar parts for flow and pressure meters; gas analysis systems; monochromators; spectrometers; optical temperature sensors; PH analysis sensors, controllers, probes and complete systems; gas analysis system parts; digital counters; speedometers and tachometers; infrared sensors and radiation sensing equipment; multimeters; power analyzers such as voltage detectors, probes, monitors and measurement cards; test fixtures and similar electrical analysis systems; wafer measurement equipment; leak detectors; electrical quantity checking machinery parts; semiconductor wafer inspection equipment; optical inspection equipment; measuring equipment; panels, frames, boards, blocks, doors, jigs, shafts, sides and structural bases for test fixtures and electrical analysis systems; automatic thermostats and temperature control equipment; automatic manostats; temperature, pressure, liquid, mass flow, pump and similar process control equipment; vapor on demand injectors; temperature controller parts; time switches, relays and other timers; carts and racks for servers; carts for holding and moving power distribution equipment; fluorescent lamp fixtures; brushes; and pens and markers (duty rate ranges from duty free to 20%). The request indicates that certain materials/components are subject to special duties under Section 232 of the Trade Expansion Act of 1962 (Section 232) or Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 232 and Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is June 24, 2019.

A copy of the notification will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Christopher Wedderburn at *Chris.Wedderburn@trade.gov* or (202) 482–1963.

Dated: May 9, 2019.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2019–09907 Filed 5–13–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–83–2019]

Foreign-Trade Zone 186—Waterville, Maine; Application for Expansion of Subzone; Flemish Master Weavers, Sanford, Maine

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Waterville, grantee of FTZ 186, requesting an expansion of Subzone 186A on behalf of Flemish Master Weavers in Sanford, Maine. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on May 8, 2019.

Subzone 186A currently consists of the following site: Site 1 (4.8 acres) 96 Gatehouse Road, Sanford. The proposed expansion would add 1.6 acres to the existing site. No authorization for additional production activity has been requested at this time. The subzone will be subject to the existing activation limit of FTZ 186.

In accordance with the Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is June 24, 2019. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to July 8, 2019.

A copy of the application will be available for public inspection in the ''Reading Room'' section of the Board's

website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: May 8, 2019.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2019–09908 Filed 5–13–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–82–2019]

Foreign-Trade Zone 294—Western Kentucky; Application for Expansion of Subzone; Mayfield Consumer Products, Mayfield, Kentucky

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Paducah McCracken County Riverport Authority, grantee of FTZ 294, requesting an expansion of Subzone 294A on behalf of Mayfield Consumer Products. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on May 8, 2019.

Subzone 294A currently consists of the following sites: Site 1 (14.4 acres) 112 Industrial Drive, Mayfield; Site 2 (3.47 acres) 1102 Fulton Road, Mayfield; and, Site 3 (25 acres) 22 Rifle Trail, Hickory Industrial Park, Hickory.

The proposed expanded subzone would include the following additional site: Site 4 (2.3 acres), 1 General Street, Mayfield. No authorization for additional production activity has been requested at this time. The subzone will be subject to the existing activation limit of FTZ 294.

In accordance with the FTZ Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is June 24, 2019. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to July 8, 2019.

A copy of the application will be available for public inspection in the ''Reading Room'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: May 8, 2019.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2019–09905 Filed 5–13–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–34–2019]

Foreign-Trade Zone (FTZ) 29—Louisville, Kentucky; Notification of Proposed Production Activity; LLFlex, LLC (Aluminum and Steel Cable Wraps), Louisville, Kentucky

LLFlex, LLC (LLFlex) submitted a notification of proposed production activity to the FTZ Board for its facility in Louisville, Kentucky. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on May 1, 2019.

LLFlex already has authority to produce aluminum foil liner stock and foil backed paperboard within Subzone 29J. The current request would add finished products and foreign status materials/components to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status materials/components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt LLFlex from customs duty payments on the foreign-status materials/components used in export production (estimated 20 percent of production). On its domestic sales, for the foreign-status materials/components noted below and in the existing scope of authority, LLFlex would be able to choose the duty rates during customs entry procedures that apply to: Bare cable wrap; polymer/plastic coated cable wrap; bare aluminum cable wrap—width <0.2mm; and, backed aluminum cable wrap (duty rate ranges from duty-free to 5.8%). LLFlex would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The materials/components sourced from abroad include: Carbon and alloy flat steel; and, flat rolled aluminum in coils (duty rate ranges from duty-free to 5.3%). The request indicates that components are subject to antidumping/countervailing duty (AD/CVD) orders if imported from certain countries. The FTZ Board's regulations (15 CFR 400.14(e)) require that merchandise subject to AD/CVD orders, or items which would be otherwise subject to suspension of liquidation under AD/CVD procedures if they entered U.S. customs territory, be admitted to the zone in privileged foreign status (19 CFR 146.41). The request also indicates that certain materials/components are subject to special duties under Section 232 of the Trade Expansion Act of 1962 (Section 232), depending on the country of origin. The applicable Section 232 decisions require subject merchandise to be admitted to FTZs in privileged foreign status.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov*. The closing period for their receipt is June 24, 2019.

A copy of the notification will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: May 8, 2019.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2019–09906 Filed 5–13–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–35–2019]

Foreign-Trade Zone (FTZ) 185—Front Royal, Virginia; Notification of Proposed Production Activity; Merck & Co., Inc.; (Pharmaceuticals); Elkton, Virginia

Merck & Co., Inc. (Merck) submitted a notification of proposed production activity to the FTZ Board for its facility in Elkton, Virginia. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on May 3, 2019.

Merck already has authority to produce pharmaceuticals within Subzone 185C. The current request

would add three finished products and four foreign status materials/components to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status materials/components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Merck from customs duty payments on the foreign-status materials/components used in export production. On its domestic sales, for the foreign-status materials/components noted below and in the existing scope of authority, Merck would be able to choose the duty rates during customs entry procedures that apply to Primaxin IV (Imipenem, Cilastatin) injectable for infusion, Invanz (Ertapenem), and Primaxin+ (Imipenem, Cilastatin, Relebactam) (duty-free). Merck would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The materials/components sourced from abroad include Imipenem, Ertapenem, Relebactam, and Cilastatin (duty rate ranges from duty-free to 6.5%). The request indicates that certain materials/components are subject to special duties under Section 232 of the Trade Expansion Act of 1962 (Section 232), depending on the country of origin. The applicable Section 232 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is June 24, 2019.

A copy of the notification will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Juanita Chen at *juanita.chen@trade.gov* or 202–482–1378.

Dated: May 9, 2019.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2019–09909 Filed 5–13–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security.

Title: Offsets in Military Exports.

Form Number(s): N/A.

OMB Control Number: 0694–0084.

Type of Review: Regular Submission.

Estimated Total Annual Burden Hours: 360 hours.

Estimated Number of Respondents: 30.

Estimated Time per Response: 12 hours.

Needs and Uses: This collection of information is required by the Defense Production Act (DPA). The DPA requires U.S. firms to furnish information to the Department of Commerce regarding offset agreements exceeding $5,000,000 in value associated with sales of weapon systems or defense-related items to foreign countries or foreign firms. Offsets are industrial or commercial compensation practices required as a condition of purchase in either government-to-government or commercial sales of defense articles and/or defense services as defined by the Arms Export Control Act and the International Traffic in Arms Regulations. Such offsets are required by most major trading partners when purchasing U.S. military equipment or defense related items.

Affected Public: Business or other for-profit organizations.

Frequency: On Occasion.

Respondent's Obligation: Mandatory.

This information collection request may be viewed at reginfo.gov *http://www.reginfo.gov/public/* . Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Sheleen Dumas,

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

[FR Doc. 2019–09892 Filed 5–13–19; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–502]

Circular Welded Carbon Steel Pipes and Tubes From the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review and Intent To Rescind the Review, in Part; Calendar Year 2017

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

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that exporters/producers of circular welded carbon steel pipes and tubes from the Republic of Turkey (Turkey) received countervailable subsidies during the period of review (POR), January 1, 2017, through December 31, 2017.

DATES: Applicable May 14, 2019.

FOR FURTHER INFORMATION CONTACT: John Conniff or Jolanta Lawska, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–1009 and (202) 482–8362, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 7, 1986, Commerce published in the **Federal Register** the countervailing duty order on circular welded carbon steel pipes and tubes from Turkey.[1] On May 2, 2018, Commerce published a notice of initiation of an administrative review of the *Order* covering 25 companies.[2] On November 15, 2018, Commerce extended the due date of the preliminary results of this administrative review until March 29, 2019.[3] On January 28, 2019, Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.[4] As a

[1] *See Countervailing Duty Order; Certain Welded Carbon Steel Pipe and Tube Products From Turkey,* 51 FR 7984 (March 7, 1986) (*Order*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR, 19215, (May 2, 2018) (*Initiation*).

[3] *See* Memorandum, ''Circular Welded Carbon Steel Pipes and Tubes from Turkey: Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review,'' dated November 15, 2018.

[4] *See* Memorandum, ''Deadlines Affected by the Partial Shutdown of the Federal Government,''

Continued

result, the revised deadline for the preliminary results in this review was extended to May 8, 2019.

For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[5] A list of topics discussed in the Preliminary Decision Memorandum is included at the Appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/*. The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Scope of the Order

The merchandise covered by the *Order* is circular welded carbon steel pipes and tubes from Turkey. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found to be countervailable, we preliminarily determine that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that confers a benefit to the recipient, and that the subsidy is specific.[6] For a full description of the methodology underlying our conclusions, *see* the accompanying Preliminary Decision Memorandum.

Intent To Rescind Administrative Review, in Part

Erbosan Erciyas Boru Sanayi ve Ticaret A.S. (Erbosan) timely filed a no shipments certification.[7] Because no evidence on the record contradicts this certification, we preliminarily intend to rescind this administrative review with regard to Erbosan, in accordance with 19 CFR 351.213(d)(3). A final decision on whether to rescind the review with respect to Erbosan will be made in the final results of this review.

Additionally, on June 1, 2018, Borusan submitted a letter to Commerce timely certifying that Borusan Istikbal Ticaret T.A.S. (Borusan Istikbal), Borusan Birlesik Boru Fabrikalair San ve Tic., Borusan Gemlik Boru Tesisleri A.S., Borusan Ithicat ve Dagitim A.S., Borusan Ihacat Ithalat ve Dagitim A.S., and Tubeco Pipe and Steel Corporation had no entries, exports, or sales of subject merchandise during the POR.[8] A final decision on whether to rescind the review with respect to these aforementioned companies for which a review was requested in connection with Borusan will be made in the final results of this review.[9]

Preliminary Results of the Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated individual subsidy rates for the Borusan Companies and the Toscelik Companies. For the period January 1, 2017, through December 31, 2017, we preliminarily determine that the following net subsidy rates for the producers/exporters under review to be as follows:

Company	Subsidy rate ad valorem percent
Borusan Holding A.S., Borusan Mannesmann Yatirim Holding, Borusan Mannesmann Boru Sanayi ve Ticaret A.S. (Borusan), and Borusan Istikbal Ticaret T.A.S. (Istikbal) (collectively, the Borusan Companies)	0.92
Toscelik Profil ve Sac Endustrisi A.S. (Toscelik Profil), Tosyali Dis Ticaret A.S. (TDT), Tosyali Holding, Toscelik Toyo Celik (Toscelik Toyo), Tosyali Filmasin ve Insaat Demir (Tosyali Filmasin), Toscelik Spiral Boru (Toscelik Spiral), Tosyali Demir Celik San A.S. (TDC), Toscelik Granul San A.S. (Toselik Granul), and Tosyali Celik Ticaret A.S. (TCT) (collectively, the Toscelik Companies)	1.53
Cagil Makina Sanayi ve Ticaret A.S	1.23
Cayirova Boru Sanayi ve Ticaret A.S	1.23
Cimtas Boru Imalatlari ve Ticaret Sirketi	1.23
Eksen Makina	1.23
Guner Eksport	1.23
Guven Steel Pipe (also known as Guven Celik Born San. Ve Tic. Ltd.)	1.23
MTS Lojistik ve Tasimacilik Hizmetleri TIC A.S. Istanbul	1.23
Net Boru Sanayi ve Dis Ticaret Koll. Sti	1.23
Toscelik Metal Ticaret A.S	1.23
Umran Celik Born Sanayii A.S., also known as Umran Steel Pipe Inc	1.23
Yucel Boru ve Profil Endustrisi A.S	1.23
Yucelboru Ihracat Ithalat ve Pazarlama A.S	1.23

Assessment Rates

Consistent with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(2), upon issuance of the final results, Commerce shall determine, and Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. We intend to issue instructions to CBP 15 days after publication of the final results of this review.

dated January 28, 2019. All deadlines in this segment of the proceeding affected by the partial federal government closure have been extended by 40 days.

[5] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Countervailing Duty Administrative Review, 2017: Certain Welded Carbon Steel Pipe and Tube Products From Turkey,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[6] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[7] *See* letter from Erbosan ''No Shipment Certification of Erbosan Erciyas Boru Sanayi ve Ticaret A.S. (Erbosan) in the 2017 Administrative Review of the Countervailing Duty Order Involving Certain Welded Carbon Steel Standard Pipe from Turkey,'' dated May 14, 2018.

[8] *See* Letter from Borusan, ''Circular Welded Carbon Steel Pines and Tubes from Turkey. Case No. C–489–502: No Shipment Letter,'' dated June 1, 2018.

[9] Because we have found Borusan Istikbal to be cross-owned with Borusan during the instant POR, we are assigning Borusan's rate to Borusan Istikbal, and thus, we do not intend to rescind the review with respect to Borusan Istikbal.

For the companies for which this review is rescinded, Commerce will instruct CBP to assess countervailing duties on all appropriate entries at a rate equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period January 1, 2017 through December 31, 2017, in accordance with 19 CFR 351.212(c)(1)(i).

Cash Deposit Requirements

Pursuant to section 751(a)(2)(C) of the Act, upon issuance of the final results, Commerce also intends to instruct CBP to collect cash deposits of estimated countervailing duties for each of the companies listed above on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review, except, where the rate calculated in the final results is zero or *de minimis,* no cash deposit will be required. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

We will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results.[10] Interested parties may submit written arguments (case briefs) within 30 days of publication of the preliminary results and rebuttal comments (rebuttal briefs) within five days after the time limit for filing the case briefs.[11] Pursuant to 19 CFR 351.309(d)(2), rebuttal briefs may respond only to issues raised in the case briefs. Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[12]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice.[13] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. Issues addressed during the hearing will be limited to those raised in the briefs.[14] If a request for a hearing is made, we will inform parties of the scheduled date for the hearing, which will be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and location to be determined.[15] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Parties are reminded that briefs and hearing requests are to be filed electronically using ACCESS and that electronically filed documents must be received successfully in their entirety by 5:00PM Eastern Time on the due date.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, Commerce will issue the final results of this administrative review, including the results of our analysis of the issues raised by parties in their comments, within 120 days after issuance of these preliminary results.

These preliminary results are 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: May 8, 2019.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2019–09935 Filed 5–13–19; 8:45 am]

BILLING CODE 3510–DS–P

[10] *See* 19 CFR 351.224(b).

[11] *See* 19 CFR 351.309(c)(1)(ii) and 351.309(d)(1).

[12] *See* 19 CFR 351.309(c)(2) and 351.309(d)(2).

[13] *See* 19 CFR 351.310(c).

[14] *See* 19 CFR 351.310(c).

[15] *See* 19 CFR 351.310.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–970]

Multilayered Wood Flooring From the People's Republic of China; Final Results of Antidumping Duty New Shipper Review; 2014–2015

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

SUMMARY: The Department of Commerce (Commerce) has conducted a new shipper review (NSR) of the antidumping duty order on multilayered wood flooring (MLWF) from the People's Republic of China (China). We have determined that Huzhou Muyun Wood Co., Ltd., (Muyun) has failed to demonstrate its qualification for a separate rate and is, therefore, subject to the China-wide entity rate, which is not under review in this period. The period of review (POR) is December 1, 2014, through May 31, 2015.

DATES: Applicable May 14, 2019.

FOR FURTHER INFORMATION CONTACT: Aleksandras Nakutis, AD/CVD Operations, Office IV, Enforcement & Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3147.

SUPPLEMENTARY INFORMATION:

Background

On July 29, 2015, Commerce initiated this NSR for Muyun in order to determine whether imports into the United States of multilayered wood flooring from China are being sold below normal value.[1] On October 26, 2016, Commerce published the final rescission of Muyun's NSR, due to the determination that Muyun's sale was non-*bona fide*.[2] On December 11, 2017, the Court of International Trade (CIT) remanded Commerce's determination, holding that the conclusion that Muyun's sale was non-*bona fide* was not supported by substantial evidence.[3] On March 6, 2018, Commerce released its final results of redetermination pursuant to court order, continuing to find that

[1] *See Multilayered Wood Flooring from the People's Republic of China: Preliminary Rescission of 2014–2015 Antidumping Duty New Shipper Reviews; 2014–2015* 80 FR 45192 (July 29, 2015).

[2] *See Multilayered Wood Flooring from the People's Republic of China: Rescission of Antidumping Duty New Shipper Reviews; 2014–2015,* 81 FR 74393 (October 26, 2016).

[3] *See Huzhou Muyun Wood Co., Ltd.* v. *United States,* Court No. 16–00245, Slip Op. 17–162 (December 11, 2017).

Muyun's sale was non-*bona fide*.[4] On July 16, 2018, the CIT issued a final judgement that Commerce's ultimate conclusion was not supported by substantial evidence, that the rescission of the NSR could not be upheld, and instructed Commerce to proceed with Muyun's NSR.[5] On August 16, 2018 Commerce published its notification to the public that the final judgement in this case is not in harmony with the final rescission.[6]

On October 19, 2018, Commerce notified interested parties that a new segment of the proceeding regarding Muyun's NSR had been created.[7] On November 5, 2018, Commerce released its timeline for the instant proceeding, including the date of verification.[8] Commerce published its *Preliminary Results* on December 21, 2018.[9] On January 29, 2019, Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 29, 2019.[10] On February 25, 2019, Muyun notified Commerce it would not be participating in the scheduled verification.[11]

Scope of the Order

The merchandise covered by the order includes MLWF, subject to certain exceptions.[12] The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.2510; 4412.31.2520; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4070; 4412.31.4075; 4412.31.4080; 4412.31.5125; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.6000; 4412.31.9100; 4412.32.0520; 4412.32.0540; 4412.32.0560; 4412.32.0565; 4412.32.0570; 4412.32.2510; 4412.32.2520; 4412.32.2525; 4412.32.2530; 4412.32.3125; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.5600; 4412.39.1000; 4412.39.3000; 4412.39.4011; 4412.39.4012; 4412.39.4019; 4412.39.4031; 4412.39.4032; 4412.39.4039; 4412.39.4051; 4412.39.4052; 4412.39.4059; 4412.39.4061; 4412.39.4062; 4412.39.4069; 4412.39.5010; 4412.39.5030; 4412.39.5050; 4412.94.1030; 4412.94.1050; 4412.94.3105; 4412.94.3111; 4412.94.3121; 4412.94.3131; 4412.94.3141; 4412.94.3160; 4412.94.3171; 4412.94.4100; 4412.94.5100; 4412.94.6000; 4412.94.7000; 4412.94.8000; 4412.94.9000; 4412.94.9500; 4412.99.0600; 4412.99.1020; 4412.99.1030; 4412.99.1040; 4412.99.3110; 4412.99.3120; 4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160; 4412.99.3170; 4412.99.4100; 4412.99.5100; 4412.99.5105; 4412.99.5115; 4412.99.5710; 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.99.9500; 4418.71.2000; 4418.71.9000; 4418.72.2000; 4418.72.9500; and 9801.00.2500.

The HTSUS subheadings are provided for convenience and customs purposes only; the written description of the scope of the order is dispositive.

Analysis of Comments Received

No parties submitted comments.

Changes Since the *Preliminary Results*

We find that Muyun has failed to demonstrate its qualification for a separate rate.

Results of New Shipper Review

In the *Preliminary Results,* Commerce determined that Muyun was eligible for a separate rate, through evidence of absence of both *de jure* and *de facto* government control over export activities, and calculated a 0.00 percent weighted-average dumping margin.[13] However, Muyun subsequently notified Commerce that it would not be participating in Commerce's scheduled verification, rendering Muyun's responses unreliable and unverifiable.[14] Accordingly, for these final results of review, we have determined that Muyun has failed to demonstrate its qualification for a separate rate and, thus, is part of the China-wide entity.

For further discussion of the issues addressed in this proceeding, *see* the IDM.[15] 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 *http://access.trade.gov* and in the Central Records Unit, room B8024 of the main Department of Commerce building. In addition, a complete version of the IDM can be accessed directly on the internet at *http://enforcement.trade.gov/frn/index.html.* The signed and the electronic versions of the IDM are identical in content. A list of the topics addressed in the IDM is contained in the Appendix to this notice.

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act, and 19 CFR 351.212(b), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Commerce intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. We intend to instruct CBP to liquidate POR entries of subject merchandise exported by Muyun at the China-wide entity rate, which is 25.62 percent.

Cash Deposit Requirements

The following cash deposit requirement will be effective upon publication of the final results of this new shipper review for shipments of the subject merchandise from China

[4] *See* Final Results Redetermination Pursuant to Court Order in *Huzhou Muyun Wood Co., Ltd* v. *United States,* Court No. 16–00245, dated March 6, 2018.

[5] *See Huzhou Muyun Wood Co., Ltd.* v. *United States,* Court No. 16–00245, Slip Op. 18–89 (CIT July 16, 2018).

[6] *See Multilayered Wood Flooring from the People's Republic of China: Notice of Court Decision Not in Harmony with Final Rescission of the Antidumping Duty New Shipper Review,* 83 FR 40748 (August 16, 2018).

[7] *See* Memorandum, ''New Shipper Review of the Antidumping Duty Order on Multilayered Wood Flooring from the People's Republic of China—APO Access,'' dated October 19, 2018.

[8] *See* Memorandum, ''New Shipper Review of the Antidumping Duty Order on Multilayered Wood Flooring from the People's Republic of China-Estimated Timeline,'' dated November 5, 2018.

[9] *See Multilayered Wood Flooring from the People's Republic of China; Preliminary Results of Antidumping Duty New Shipper Review; 2014–2015,* 83 FR 65628 (September 21, 2018) (*Preliminary Results*).

[10] *See* Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in this segment of the proceeding have been extended by 40 days.

[11] *See* letter from Muyun, ''Multilayered Wood Flooring from the People's Republic of China-Response to Department regarding Verification,'' dated February 25, 2019.

[12] *See* Memorandum from Commerce, '' Issues and Decision Memorandum for the Final Determination of Huzhou Muyun Wood Co., Ltd. Antidumping Duty New Shipper Review, 2014–2015: Multilayered Wood Flooring from the People's Republic of China,'' dated concurrently (IDM) for a full description of the scope of the order.

[13] *See Preliminary Results,* 83 FR 65628.

[14] *See* letter from Muyun, ''Multilayered Wood Flooring from the People's Republic of China-Response to Department regarding Verification,'' dated February 25, 2019.

[15] *See* IDM.

entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: As Muyun has not been found to be entitled to a separate rate, the cash deposit rate will be that for the China-wide entity, or 25.62 percent. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding APO

This notice also serves as a reminder to the parties subject to administrative protective order (APO) of their responsibility concerning the disposition of business proprietary information (BPI) disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern BPI in this segment of the proceeding. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act and 19 CFR 351.214.

Dated: May 7, 2019.

Christian Marsh,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of the Methodology
V. Recommendation

[FR Doc. 2019–09900 Filed 5–13–19; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Meeting of the Advisory Committee on Commercial Remote Sensing

ACTION: Notice of meeting.

SUMMARY: The Advisory Committee on Commercial Remote Sensing (''ACCRES'' or ''the Committee'') will meet June 4, 2019.

DATES: The meeting is scheduled as follows: June 4, 2019, 8:00 a.m.–4:00 p.m. There will be a one hour lunch break from 12:00 p.m.–1:00 p.m.

ADDRESSES: The meeting will be held at the Commerce Research Library, Herbert C. Hoover Building, 1401 Constitution Avenue NW, Washington, DC 20230.

The Commerce Research Library has its own dedicated entrance that will only be accessible from the entrance at 15th Street and Pennsylvania Avenue.

FOR FURTHER INFORMATION CONTACT: Tashaun Pierre, NOAA/NESDIS/CRSRA, 1335 East West Highway, G–101, Silver Spring, Maryland 20910; (301) 713–7077 or *Tashaun.pierre@noaa.gov.*

SUPPLEMENTARY INFORMATION: As required by Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 2 (FACA) and its implementing regulations, *see* 41 CFR 102–3.150, notice is hereby given of the meeting of ACCRES. ACCRES was established by the Secretary of Commerce (Secretary) on May 21, 2002, to advise the Secretary of Commerce through the Under Secretary of Commerce for Oceans and Atmosphere on matters relating to the U.S. commercial remote sensing space industry and on the National Oceanic and Atmospheric Administration's activities to carry out the responsibilities of the Department of Commerce set forth in the National and Commercial Space Programs Act of 2010 (51 U.S.C. 60101 *et seq.*).

Purpose of the Meeting and Matters To Be Considered

The meeting will be open to the public pursuant to Section 10(a)(1) of the FACA. During the meeting, the Committee will receive updates on NOAA's Commercial Remote Sensing Regulatory Affairs activities and discuss updates to the commercial remote sensing regulatory regime. The Committee will also discuss updates in the regulations and trends in international regulatory regimes. The Committee will be available to receive public comments on its activities.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for special accommodations may be directed to Tashaun Pierre, NOAA/NESDIS/CRSRA, 1335 East West Highway, G–101, Silver Spring, Maryland 20910; (301) 713–7077 or *Tashaun.pierre@noaa.gov.*

Additional Information and Public Comments

In accordance with 41 CFR 102–3.140(b), the meeting room is sufficient to accommodate advisory committee members, agency staff, and a reasonable number of interested members of the public. However, to avoid overcrowding should an unexpected number of members of the public attend the meeting, ACCRES invites interested members of the public to RSVP through the following link: *https://docs.google.com/forms/d/e/1FAIpQLSfE5bsXClfhSFzym6fU0gPasZOcw7PSfD-9pm6NX9WzjSWHuw/viewform?usp=pp_url,* directly to Tashaun Pierre at (301) 713–7077, or by email at *Tashaun.pierre@noaa.gov,* by May 29, 2019. Any member of the public wishing further information concerning the meeting or who wishes to submit oral or written comments should contact Tahara Dawkins, Designated Federal Officer for ACCRES, NOAA/NESDIS/CRSRA, 1335 East West Highway, G–101, Silver Spring, Maryland 20910; (301) 713–3385 or *tahara.dawkins@noaa.gov.* Copies of the draft meeting agenda will be posted on the Commercial Remote Sensing Regulatory Affairs Office at *https://www.nesdis.noaa.gov/CRSRA/accresMeetings.html.*

ACCRES expects that public statements presented at its meetings will not be repetitive of previously-submitted oral or written statements. In general, each individual or group making an oral presentation may be limited to a total time of five minutes. Written comments sent to NOAA/NESDIS/CRSRA on or before October 10, 2018 will be provided to Committee members in advance of the meeting. Comments received too close to the meeting date will normally be provided to Committee members at the meeting.

Stephen M. Volz,

Assistant Administrator for Satellite and Information Services.

[FR Doc. 2019–09898 Filed 5–13–19; 8:45 am]

BILLING CODE 3510–HR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XH028

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Herring Advisory Panel to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Wednesday, May 29, 2019 at 10 a.m.

ADDRESSES:

Meeting address: The meeting will be held at the Four Points by Sheraton, Wakefield, MA 01880; telephone: (781) 245–9300.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Advisory Panel will review Framework 6 to the Herring Fishery Management Plan, an action considering fishery specifications for FY 2019–2021; identify final preferred alternatives for Council consideration. They will also discuss and make recommendations for the Council review of the Management Strategy Evaluation (MSE) process used in Amendment 8 to develop and analyze acceptable biological catch (ABC) control rule alternatives. The panel will have an initial discussion of a background document being prepared on Atlantic herring spawning activity on Georges Bank. They will review findings and recommendations from the Research Set-Aside (RSA) Program Review and identify which issues the Council should consider further. Other business may be discussed as necessary.

Although non-emergency issues not contained on this agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. This meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: May 9, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–09913 Filed 5–13–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD900

Marine Mammals; File No. 18786

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

ACTION: Notice; receipt of application for permit amendment.

SUMMARY: Notice is hereby given that the NMFS Office of Protected Resources, Marine Mammal Health and Stranding Response Program (MMHSRP) (Responsible Party: Teri Rowles, D.V.M., Ph.D.), 1315 East West Highway, Silver Spring, MD 20910, has applied for an amendment to Scientific Research Permit No. 18786–03.

DATES: Written, telefaxed, or email comments must be received on or before June 13, 2019.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the ''Features'' box on the Applications and Permits for Protected Species home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 18786 from the list of available applications.

These documents are also available upon written request or by appointment in the Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Shasta McClenahan or Amy Sloan, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 18786–03 is requested under the authority of the Marine Mammal Protection Act of 1972 (MMPA), as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Permit No. 18786, issued on June 30, 2015 (80 FR 44939), authorizes the permit holder to: (1) Carry out response, rescue, rehabilitation and release of threatened and endangered marine mammals under NMFS jurisdiction (Cetacea and Pinnipedia [excluding walrus]), and disentanglement of all marine mammals under NMFS jurisdiction, pursuant to sections 109(h), 112(c), and Title IV of the MMPA; and, carry out such activities as enhancement pursuant to section 10(a)(1)(A) of the ESA; (2) Conduct health-related, bona fide scientific research studies on marine mammals and marine mammal parts under NMFS jurisdiction pursuant to sections 104(c) and Title IV of the MMPA and section 10(a)(1)(A) of the ESA, including research related to emergency response that may involve compromised animals, and research on healthy animals that have not been subject to emergency response (*e.g.,* baseline health studies); (3) Conduct Level B harassment on all marine mammal species under NMFS jurisdiction incidental to MMHSRP activities in the U.S.; and (4) Collect,

salvage, receive, possess, transfer, import, export, analyze, and curate marine mammal specimens under NMFS jurisdiction for purposes delineated in numbers (1) and (2) above.

The permit holder is requesting the permit be amended to include authorization to: (1) Extend the duration of the permit for 18 months through December 31, 2021; and (2) increase the number of research takes for non-ESA listed dolphins by 400 takes.

An environmental assessment (EA) was prepared for the original permit (No. 18786) in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), to examine whether significant environmental impacts could result from issuance of the proposed scientific research permit. Based on the analyses in the EA, NMFS determined that issuance of the permit would not significantly impact the quality of the human environment and that preparation of an environmental impact statement was not required. That determination is documented in a Finding of No Significant Impact (FONSI), signed on June 29, 2015. The activities in this proposed amendment are consistent with the analyses in the original EA and no additional NEPA analysis is required for the issuance of this amendment. The original EA and FONSI are available upon request.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: May 9, 2019.

Julia Marie Harrison,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–09916 Filed 5–13–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XH027

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Ecosystem-Based Fishery Management (EBFM) Committee to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, May 28, 2019 at 9:30 a.m.

ADDRESSES:

Meeting address: The meeting will be held at the Boston Marriott Quincy, 1000 Marriott Drive, Quincy, MA 02169; telephone: (617) 472–1000.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The committee will discuss and develop options, strengths, and weaknesses of several strategies for supporting EBFM through data monitoring (monitoring stock complex catch, data for adaptive management) and research. They will review and provide feedback on an initial draft prepared by the Plan Development Team on EBFM-related forage fish management policies in New England as well as discuss related business, including additional tasking for the Plan Development Team to complete a draft eFEP. Other business may be discussed as necessary.

Although non-emergency issues not contained on this agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. This meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: May 9, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–09914 Filed 5–13–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy (DoN) announces the availability of the inventions listed below, assigned to the United States Government, as represented by the Secretary of the Navy, for domestic and foreign licensing by the Department of the Navy.

ADDRESSES: Requests for copies of the patents cited should be directed to Naval Surface Warfare Center, Crane Div, Code OOL, Bldg 2, 300 Highway 361, Crane, IN 47522–5001.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Monsey, Naval Surface Warfare Center, Crane Div, Code OOL, Bldg 2, 300 Highway 361, Crane, IN 47522–5001, Email *Christopher.Monsey@navy.mil,* 812–854–2777.

SUPPLEMENTARY INFORMATION: The following patents are available for licensing: Patent No. 10,247,781 (Navy Case No. 200387): COMPACT ELECTRONICS TEST SYSTEM HAVING USER PROGRAMMABLE DEVICE INTERFACES AND ON-BOARD FUNCTIONS ADAPTED FOR USE IN PROXIMITY TO A RADIATION FIELD/ and Patent No. 10,267,582 (Navy Case No. 103207): APPARATUS FOR MEASURING THE TEMPERATURE OF CHAMBERED PROJECTILE.

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: May 9, 2019.

M.S. Werner,

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

[FR Doc. 2019–09891 Filed 5–13–19; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2019–ICCD–0064]

Agency Information Collection Activities; Comment Request; 7–OB Annual Performance Report for the Independent Living Services for Older Individuals Who are Blind Program

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before July 15, 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–0064. 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 Information Collection Clearance Division, U.S. Department of Education, 550 12th Street SW, PCP, Room 9086, Washington, DC 20202–0023.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact James Billy, 202–245–7273.

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: 7–OB Annual Performance Report for the Independent Living Services for Older Individuals who are Blind Program.

OMB Control Number: 1820–0608.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 56.

Total Estimated Number of Annual Burden Hours: 280.

Abstract: The Rehabilitation Services Administration (RSA) uses this form to meet the specific data collection requirements of Section 752 of the Rehabilitation Act, as amended by the Workforce Innovation and Opportunity Act (WIOA) and implementing regulations at 34 CFR 367.31(c). Each Designated State Agency (DSA) that administers the Independent Living Services for Older Individuals Who Are Blind (IL–OIB) program is required to submit the Rehabilititation Services Administration–7–Older Blind (RSA–7–OB) report annually to the RSA Commissioner on or before December 30. The revisions to the currently approved form and instructions include the removal of duplicative and confusing data elements as well as those not specifically required by statute or used for statutorily required activities.

Dated: May 8, 2019.

Kate Mullan,

PRA Coordinator, Information Collection Clearance Program, Information Management Branch, Office of the Chief Information Officer.

[FR Doc. 2019–09846 Filed 5–13–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator and Foreign Utility Company Status

May 8, 2019.

	Docket Nos.
Hillcrest Solar I, LLC	EG19–54–000.
Long Ridge Energy Generation LLC.	EG19–55–000.
Waipio PV, LLC	EG19–56–000.
Coyote Ridge Wind, LLC	EG19–57–000
Big Level Wind LLC	EG19–58–000.
Broadlands Wind Farm LLC	EG19–59–000.
Hidalgo Wind Farm II LLC	EG19–60–000.
Lexington Chenoa Wind Farm LLC.	EG19–61–000.
Brickyard Hills Project, LLC	EG19–62–000.
Conrad (Chatterley) Ltd	FC19–3–000.

Take notice that during the month of April 2019, the status of the above-captioned entities as Exempt Wholesale Generators or Foreign Utility Companies became effective by operation of the Commission's regulations. 18 CFR 366.7(a) (2019).

Dated: May 8, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–09882 Filed 5–13–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: CP17–40–003.
Applicants: Spire STL Pipeline LLC.
Description: Abbreviated Application for Limited Amendment of Certificate of Public Convenience and Necessity.
Filed Date: 5/2/19.
Accession Number: 20190502–5138.
Comments Due: 5 p.m. ET 5/23/19.

Docket Numbers: RP19–165–002.
Applicants: WBI Energy Transmission, Inc.
Description: Compliance filing 2019 Motion Filing to be effective 5/1/2019.
Filed Date: 5/1/19.
Accession Number: 20190501–5007.
Comments Due: 5 p.m. ET 5/13/19.

Docket Numbers: RP19–1214–000.
Applicants: Enable Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate Filing—May 7 2019

Encana 1011022 to be effective 5/7/2019.

Filed Date: 5/7/19.

Accession Number: 20190507–5042.

Comments Due: 5 p.m. ET 5/20/19.

Docket Numbers: RP19–1215–000.

Applicants: Cameron Interstate Pipeline, LLC.

Description: Annual Report of Interruptible Transportation Revenue Sharing of Cameron Interstate Pipeline, LLC under RP19–1215.

Filed Date: 5/7/19.

Accession Number: 20190507–5152.

Comments Due: 5 p.m. ET 5/20/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 8, 2019..

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–09880 Filed 5–13–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 9100–040]

Riverdale Power and Electric Company, Inc.; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 9100–040.

c. *Date filed:* April 27, 2017.

d. *Applicant:* Riverdale Power and Electric Company, Inc. (Riverdale Power).

e. *Name of Project:* Riverdale Mills Project.

f. *Location:* On the Blackstone River in Worcester County, Massachusetts. There are no federal or tribal lands within the project boundary.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Kevin Young, Young Energy Services, LLC, 2112 Talmage Drive, Leland, NC 28451; (617) 645–3658.

i. *FERC Contact:* Michael Watts, 202–502–6123 or *michael.watts@ferc.gov*.

j. Deadline for filing motions to intervene and protests, comments, recommendations, terms and conditions, and prescriptions: 60 Days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene and protests, comments, recommendations, terms and conditions, and prescriptions using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–9100–040.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is ready for environmental analysis. However, site-specific water quality data has not been filed with the Commission in accordance with Commission staff's February 2, 2018 letter addressing the Massachusetts Department of Environmental Protection's study request. Therefore, the Commission's analysis of water quality will rely on the best currently available information which may be supplemented later in the relicensing process.

l. The existing Riverdale Mills Project consists of: (1) A 142-foot-long, 14-foot-high concrete and steel dam that includes a spillway that contains five 22-foot-wide, 7.5-foot-high stanchion bays with stop-logs, and one 22-foot-wide, 7.5-foot-high hydraulically-operated spillway gate; (2) a 22 acre impoundment with a normal maximum elevation of 262.35 feet above mean sea level (msl); (3) an unused 8-foot-wide, 8-foot-high western intake structure fitted with two 4-foot-wide, 6-foot-high sluice gates and an 8-foot-wide, 8-foot-high trashrack, and connected to an 8-foot-wide, 212.1-foot-long sluiceway; (4) an unused 8-foot-wide, 8-foot-high middle intake structure fitted with two 4-foot-wide, 6-foot-high sluice gates and an 8-foot-wide, 8-foot-high trashrack, and connected to an 8-foot-wide, 250.4-foot-long sluiceway; (5) an 18-foot-wide, 8-foot-high eastern intake structure fitted with three 6-foot-wide, 6-foot-high sluice gates and an 18-foot-wide, 8-foot-high trashrack with 1.75-inch bar spacing, that is connected to an 18-foot-wide, 341.1-foot-long sluiceway; (6) a 200-foot-long, 75-foot-wide powerhouse room, located within the Riverdale Mills Corporation manufacturing facility, and containing a 150-kW turbine-generator unit; (7) a tailrace that includes a 214-foot-long arched granite structure with a minimum width of 18 feet, and an 1,800-foot-long, 37.5- to 75-foot-wide excavated channel; (8) a 75-foot-long, 480-volt generator lead that connects the turbine-generator unit to the Riverdale Mills Corporation manufacturing facility; and (9) appurtenant facilities.

Riverdale Power operates the project as a run-of-river facility with an average annual energy production of approximately 162,000 kilowatt-hours. The project bypasses approximately 1,200 feet of the Blackstone River, and there is currently no required minimum instream flow for the bypassed reach. Riverdale Power proposes to continue operating the project in a run-of-river mode, and release a minimum flow of 10 cubic feet per second into the bypassed reach, including leakage from the stanchion stop-logs at the spillway.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at Riverdale Power's office at 130

Riverdale Street, Northbridge, MA 01534.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. *Procedural Schedule:* The application will be processed according to the following revised schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Filing of interventions, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions.	July 2019.
Commission issues Environmental Assessment	November 2019.
Comments on Environmental Assessment	December 2019.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

p. A license applicant must file no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Dated: May 8, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–09883 Filed 5–13–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting Notice

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

TIME AND DATE: May 16, 2019 10:00 a.m.

PLACE: Room 2C, 888 First Street NE, Washington, DC 20426.

STATUS: OPEN.

MATTERS TO BE CONSIDERED: Agenda

* NOTE—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's website at *http://ferc.capitolconnection.org/* using the eLibrary link, or may be examined in the Commission's Public Reference Room.

1056TH MEETING—OPEN MEETING

[May 16, 2019—10:00 a.m.]

Item No.	Docket No.	Company
	Administrative	
A–1	AD19–1–000	Agency Administrative Matters.
A–2	AD19–2–000	Customer Matters, Reliability, Security and Market Operations.
A–3	AD19–14–000	2019 Summer Energy Market and Reliability Assessment.
	Electric	
E–1	RM16–23–001	Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators.
	AD16–20–001	Electric Storage Participation in Regions with Organized Wholesale Electric Markets.
E–2	EL16–108–000	Tilton Energy LLC v. Midcontinent Independent System Operator, Inc.
	EL17–29–000	American Municipal Power, Inc. v. Midcontinent Independent System Operator, Inc.
	EL17–31–000	Northern Illinois Municipal Power Agency v. PJM, Interconnection, L.L.C.

1056TH MEETING—OPEN MEETING—Continued

[May 16, 2019—10:00 a.m.]

Item No.	Docket No.	Company
	EL17–37–000	American Municipal Power, Inc. v. PJM Interconnection, L.L.C.
	EL17–54–000 (consolidated)	Dynegy Marketing and Trade, LLC and Illinois Power, Marketing Company v. Midcontinent Independent System Operator, Inc.
E–3	EL17–29–000	American Municipal Power, Inc. v. Midcontinent, Independent System Operator, Inc.
	EL16–108–000	Tilton Energy LLC v. Midcontinent Independent System Operator, Inc.
	EL17–31–000	Northern Illinois Municipal Power Agency v. PJM, Interconnection, L.L.C.
	EL17–37–000	American Municipal Power, Inc. v. PJM Interconnection, L.L.C.
	EL17–54–000 (consolidated)	Dynegy Marketing and Trade, LLC and Illinois Power, Marketing Company v. Midcontinent Independent System Operator, Inc.
E–4	EL17–31–000	Northern Illinois Municipal Power Agency v. PJM Interconnection, L.L.C.
	EL17–37–000	American Municipal Power, Inc. v. PJM Interconnection, L.L.C.
	EL16–108–000	Tilton Energy LLC v. Midcontinent Independent System Operator, Inc.
	EL17–29–000	American Municipal Power, Inc. v. Midcontinent, Independent System Operator, Inc.
	EL17–54–000 (consolidated)	Dynegy Marketing and Trade, LLC and Illinois Power, Marketing Company v. Midcontinent Independent System Operator, Inc.
E–5	EL17–54–000 (consolidated)	Dynegy Marketing and Trade, LLC and Illinois Power, Marketing Company v. Midcontinent Independent System Operator, Inc.
	EL16–108–000	Tilton Energy LLC v. Midcontinent Independent System Operator, Inc.
	EL17–29–000	American Municipal Power, Inc. v. Midcontinent, Independent System Operator, Inc.
	EL17–31–000	Northern Illinois Municipal Power Agency v. PJM, Interconnection, L.L.C.
	EL17–37–000	American Municipal Power, Inc. v. PJM Interconnection, L.L.C.
E–6	RM05–5–027	Standards for Business Practices and Communication, Protocols for Public Utilities.
E–7	EL18–138–000	Midcontinent Independent System Operator, Inc. ALLETE, Inc. Montana-Dakota Utilities Co. Northern Indiana Public Service Company Otter Tail Power Company Southern Indiana Gas & Electric Company.
	ER18–1793–001	Midcontinent Independent System Operator, Inc.
E–8	EL18–157–000	American Transmission Company LLC.
	ER19–838–000	Midcontinent Independent System Operator, Inc.
E–9	EL18–158–000	GridLiance West LLC.
	ER17–706–006	
E–10	EL18–159–000	International Transmission Company.
	EL18–160–000	ITC Midwest, LLC.
	ER18–2323–002	Midcontinent Independent System Operator, Inc.
E–11	EL18–164–000	Southern California Edison Company.
	ER19–845–000	
E–12	EL18–165–000	TransCanyon DCR, LLC.
	ER15–1682–006	
E–13	EL18–167–000	Virginia Electric and Power Company.
	ER19–839–001	PJM Interconnection, L.L.C.
E–14	EL19–16–000	Michigan Electric Transmission Company, LLC.
	ER18–2323–001	Midcontinent Independent System Operator, Inc.
E–15	EL18–172–000	American Municipal Power, Inc.
E–16	EL18–174–000	American Municipal Power, Inc.
E–17	EL19–40–000	Florida Municipal Power Agency v. Duke Energy Florida, LLC.
E–18	EL19–30–000	LS Power Grid New York, LLC. LS Power Grid New York Corporation I.
E–19	EC19–68–000	Clearway Energy Group LLC. Clearway Energy, Inc.
E–20	ER19–366–000 ER19–366–001	Public Service Company of Colorado.
	Miscellaneous	
M–1	PL10–2–003	Enforcement of Statutes, Regulations, and Orders.
	Gas	
G–1	RP18–923–000 RP18–923–002 RP18–923–003 RP18–923–005	Enable Mississippi River Transmission, LLC.
G–2	RP19–996–000	Apache Corporation Red Wolf Acquisitions, LLC.
G–3	RP18–987–001 RP18–990–001	Transcontinental Gas Pipe Line Company, LLC.

1056TH MEETING—OPEN MEETING—Continued

[May 16, 2019—10:00 a.m.]

Item No.	Docket No.	Company
	Hydro	
H–1	P–2242–078	Eugene Water & Electric Board.
	Certificates	
C–1	CP19–34–000	Alliance Pipeline L.P.
C–2	CP17–470–000	Freeport LNG Development, L.P. FLNG Liquefaction 4, LLC.

Issued: May 9, 2019.

Kimberly D. Bose,

Secretary.

A free webcast of this event is available through *http://ferc.capitolconnection.org/* .Anyone with internet access who desires to view this event can do so by navigating to *www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://ferc.capitolconnection.org/* or contact Shirley Al-Jarani at 703–993–3104.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. 2019–10044 Filed 5–10–19; 4:15 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC19–87–000.

Applicants: RWE Aktiengesellschaft, E.ON SE, Munnsville Wind Farm, LLC, Pioneer Trail Wind Farm, LLC, Radford's Run Wind Farm, LLC, Settlers Trail Wind Farm, LLC, Stony Creek Wind Farm, LLC, Wildcat Wind Farm I, LLC, Iron Horse Battery Storage, LLC, EC&R Energy Marketing, LLC, EC&R O&M, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act, et al. of RWE Aktiengesellschaft, et al.

Filed Date: 5/7/19.

Accession Number: 20190507–5160.

Comments Due: 5 p.m. ET 5/28/19.

Docket Numbers: EC19–88–000.

Applicants: Cinergy Corp., Duke Energy Renewables, Inc., Caprock Solar 1 LLC, Cimarron Windpower II, LLC, Frontier Windpower, LLC, Happy Jack Windpower, LLC, Ironwood Windpower, LLC, Kit Carson Windpower, LLC, Laurel Hill Wind Energy, LLC, North Allegheny Wind, LLC, Pumpjack Solar I, LLC, Rio Bravo Solar I, LLC, Rio Bravo Solar II, LLC, Shoreham Solar Commons LLC, Seville Solar One LLC, Seville Solar Two LLC, Silver Sage Windpower, LLC, Three Buttes Windpower, LLC, Top of the World Wind Energy LLC, Tallbear Seville LLC, Wildwood Solar I, LLC, Wildwood Solar II, LLC, John Hancock Life Insurance Company (U.S.A.), JH Symphony Renewables, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Cinergy Corp., et al.

Filed Date: 5/8/19.

Accession Number: 20190508–5097.

Comments Due: 5 p.m. ET 5/29/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–572–007.

Applicants: New York Transco, LLC, New York Independent System Operator, Inc.

Description: Compliance filing: NY Transco compliance re: formula rate revisions AC transmission projects to be effective 4/8/2019.

Filed Date: 5/8/19.

Accession Number: 20190508–5001.

Comments Due: 5 p.m. ET 5/29/19.

Docket Numbers: ER19–318–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.19a(b): Refund Report_Cleco Power [ER17–1368–000, ER17–1669–000, ER18–1237–000 & ER19–318–000] to be effective N/A.

Filed Date: 5/8/19.

Accession Number: 20190508–5058.

Comments Due: 5 p.m. ET 5/29/19.

Docket Numbers: ER19–1456–001.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Tariff Amendment: 2019–05–08_SA 3293 Big Stone Sub Transformer Upgrade Sub MPFCA (J488 J493 J526) to be effective 3/29/2019.

Filed Date: 5/8/19.

Accession Number: 20190508–5099.

Comments Due: 5 p.m. ET 5/20/19.

Docket Numbers: ER19–1797–000.

Applicants: Valcour Clinton Windpark, LLC.

Description: § 205(d) Rate Filing: Notice of Succession & Clarification of Category Seller Status to be effective 5/8/2019.

Filed Date: 5/7/19.

Accession Number: 20190507–5108.

Comments Due: 5 p.m. ET 5/28/19.

Docket Numbers: ER19–1798–000.

Applicants: Valcour Ellenburg Windpark, LLC.

Description: § 205(d) Rate Filing: Notice of Succession & Clarification of Category Seller Status to be effective 5/8/2019.

Filed Date: 5/7/19.

Accession Number: 20190507–5124.

Comments Due: 5 p.m. ET 5/28/19.

Docket Numbers: ER19–1799–000.

Applicants: Valcour Wethersfield Windpark, LLC.

Description: § 205(d) Rate Filing: Notice of Succession & Clarification of Category Seller Status to be effective 5/8/2019.

Filed Date: 5/7/19.

Accession Number: 20190507–5128.

Comments Due: 5 p.m. ET 5/28/19.

Docket Numbers: ER19–1800–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2019–05–07_SA 6511 ETEC–MISO Agreement for Pseudo-Ties Out of MISO to be effective 6/1/2019.

Filed Date: 5/7/19.
Accession Number: 20190507–5145.
Comments Due: 5 p.m. ET 5/28/19.
Docket Numbers: ER19–1801–000.
Applicants: Fresh Air Energy II, LLC.
Description: Petition for Limited Waiver of Tariff of Fresh Air Energy II, LLC.
Filed Date: 5/7/19.
Accession Number: 20190507–5153.
Comments Due: 5 p.m. ET 5/28/19.
Docket Numbers: ER19–1802–000.
Applicants: Portland General Electric Company.
Description: Petition to Terminate Settlement (EL02–114–000 and EL02–115–001) of Portland General Electric Company.
Filed Date: 5/7/19.
Accession Number: 20190507–5159.
Comments Due: 5 p.m. ET 5/28/19.
Docket Numbers: ER19–1803–000.
Applicants: North Rosamond Solar, LLC.
Description: § 205(d) Rate Filing: Amendments to MBR Tariff to Reflect Affiliation to be effective 4/10/2019.
Filed Date: 5/8/19.
Accession Number: 20190508–5010.
Comments Due: 5 p.m. ET 5/29/19.
Docket Numbers: ER19–1804–000.
Applicants: The Potomac Edison Company, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Potomac Edison submits CA, Service Agreement No. 5274 with SVEC to be effective 7/7/2019.
Filed Date: 5/8/19.
Accession Number: 20190508–5028.
Comments Due: 5 p.m. ET 5/29/19.
Docket Numbers: ER19–1805–000.
Applicants: El Paso Electric Company.
Description: § 205(d) Rate Filing: Service Agreement No. 317, Short-Term Firm PTP Agreement with EDF to be effective 7/8/2019.
Filed Date: 5/8/19.
Accession Number: 20190508–5072.
Comments Due: 5 p.m. ET 5/29/19.

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: May 8, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–09881 Filed 5–13–19; 8:45 am]

BILLING CODE 6717–01–P

EXPORT-IMPORT BANK

[Public Notice: 2019–3011]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: Submission for OMB review and comments request.

SUMMARY: The Export-Import Bank of the United States (EXIM), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995. The purpose of this collection is to gather information necessary to make a determination of eligibility of a transaction for EXIM assistance under its medium-term guarantee and insurance program.

The form can be viewed at: *http://www.exim.gov/sites/default/files/pub/pending/eib03-02_0.pdf.*

DATES: Comments should be received on or before June 13, 2019 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *http://www.regulations.gov* (EIB 03–02) or by mail to Office of Information and Regulatory Affairs, 725 17th Street NW, Washington, DC 20038, Attn: OMB 3048–0014.

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB 03–02, Application for Medium Term Insurance or Guarantee.

OMB Number: 3048–0014.

Type of Review: Renewal.

Need and Use: The purpose of this collection is to gather information necessary to make a determination of eligibility of a transaction for EXIM assistance under its medium-term guarantee and insurance program.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 400.

Estimated Time per Respondent: 2 hours.

Annual Burden Hours: 800 hours.

Frequency of Reporting or Use: As needed.

Government Expenses:

Reviewing Time per Year: 700 hours.

Average Wages per Hour: $42.50.

Average Cost per Year: $29,750 (time * wages).

Benefits and Overhead: 20%.

Total Government Cost: $35,700.

Bassam Doughman,

IT Specialist.

[FR Doc. 2019–09917 Filed 5–13–19; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (''Act'') (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 31, 2019.

A. Federal Reserve Bank of Philadelphia (William Spaniel, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521. Comments can also be sent electronically to *Comments.applications@phil.frb.org:*

1. *Patriot Financial Partners, GP II, L.P., Patriot Financial Partners II, L.P., Patriot Financial Partners Parallel II, L.P., Patriot Financial Partners, GP II, LLC., Patriot Financial Manager, L.P., Patriot Financial Manager, LLC. and Messrs. W. Kirk Wycoff, James J. Lynch and Ira M. Lubert all of Radnor, Pennsylvania;* to acquire voting shares of Patriot Financial Partners L.P., Philadelphia, Pennsylvania, and thereby indirectly acquire shares of The Freedom Bank of Virginia, Fairfax, Virginia.

B. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Phyllis A. Drake, individually and acting in concert with Richard R. Drake,*

both of Radcliffe, Iowa; to retain voting shares of Drake Holding Company and thereby indirectly retain shares of Security State Bank, both of Radcliffe, Iowa.

C. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Jonathan Miller, Richardson, Texas, as co-trustee of the James H. Oliver NE Trust and the James H. Oliver Exempt Trust and as member of the Oliver Control Group;* to retain voting shares of Platte Valley Cattle Company, Grand Island, Nebraska, and thereby indirectly retain shares of Town & Country Bank, Ravenna, Nebraska.

Board of Governors of the Federal Reserve System, May 9, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–09911 Filed 5–13–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0102; Docket No. 2019–0003; Sequence No. 21]

Information Collection; Prompt Payment

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, the FAR Council invites the public to comment upon a renewal concerning prompt payment.

DATES: *Submit comments on or before:* July 15, 2019.

ADDRESSES: The FAR Council invites interested persons to submit comments on this collection by either of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. Go to *http://www.regulations.gov* and follow the instructions on the site.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Ms. Mandell/IC 9000–0102, Prompt Payment.

Instructions: All items submitted must cite Information Collection 9000–0102, Prompt Payment. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Funk, Procurement Analyst, at telephone 202–357–5805, or via email at *kevin.funk@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Overview of Information Collection

Description of the Information Collection

1. *Type of Information Collection*—Revision/Renewal of a currently approved collection.
2. *Title of the Collection*—Prompt Payment.
3. *Agency form number, if any*—None.

Solicitation of Public Comment

Written comments and suggestions from the public should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

B. Purpose

Paragraph (c) of the clause at Federal Acquisition Regulation (FAR) 52.232–5, Payments Under Fixed-Price Construction Contracts, requires that contractors under fixed-price construction contracts certify, for every progress payment request, that payments to subcontractors/suppliers have been made from previous payments received under the contract and timely payments will be made from the proceeds of the payment covered by the certification, and that this payment request does not include any amount which the contractor intends to withhold from a subcontractor/supplier.

Paragraphs (e) and (g) of the clause at FAR 52.232–27, Prompt Payment for Construction Contracts, require contractors to notify the Government regarding any withheld amounts of a progress payment to a subcontractor, the specific cause for the withholding, and the remedial action to be taken by the subcontractor.

The information provided under these two clauses is used to determine the proper amount of payments to Federal contractors and understand when the contractor withholds amounts from subcontractors/suppliers after the Government has already paid the contractor the amounts withheld.

C. Annual Burden

Respondents: 13,847.
Responses per Respondent: 16.
Total Annual Responses: 214,672.
Hours per Response: .33.
Total Burden Hours: 70,842.
Obtaining Copies: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, at 202–501–4755. Please cite OMB Control No. 9000–0102, Prompt Payment, in all correspondence.

Dated: May 8, 2019.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2019–09851 Filed 5–13–19; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Request for Information.

SUMMARY: AHRQ invites public comment on its Request for Information

(RFI) to inform potential revisions to the Consumer Assessment of Healthcare Providers and Systems Health Plan Survey 5.0. The Consumer Assessment of Healthcare Providers and Systems (CAHPS®) Health Plan Survey 5.0 is one of the CAHPS family of surveys that assess patients' experiences with health care providers, in different settings, and with health plans. The CAHPS surveys cover topics that are important to patients and that they are best able to assess, such as the communication with providers and access to health care services.

This RFI requests public comment regarding the relevance and validity of the questions on CAHPS Health Plan Survey 5.0 (the Survey), and any user concerns about revisions to the Survey.

DATES: Responses to the RFI must be received no later than June 13, 2019.

ADDRESSES: Interested parties are to submit comments electronically to *CAHPS1@westat.com* with the subject line HP RFI. Non-electronic responses will also be accepted. Please mail to CAHPS; Westat; 1600 Research Blvd.; RB 1186S; Rockville, MD 20850.

FOR FURTHER INFORMATION CONTACT: Questions may be addressed to Caren Ginsberg, Director, CAHPS Division, Center for Quality Improvement and Patient Safety, *caren.ginsberg@ahrq.hhs.gov,* or (301) 427–1894.

SUPPLEMENTARY INFORMATION: The last update of the Survey was in May 2012. AHRQ is considering an update to the Survey to ensure that the Survey questions continue to be relevant to Survey sponsors, users, patients, consumers, and other stakeholders. AHRQ is *not* seeking information on Survey administration methodology, public reporting, or Survey length with this request.

AHRQ is seeking information on current uses of the Survey that reflects organization-specific perspectives, the impact of a potential Survey revision, and areas of the Survey that should and should not be modified. Respondents should refer to the questions with details on how such a Survey revision might affect the organization(s) they represent. Specific questions of interest to AHRQ include, but are not limited to, the following:

1. How and why does the respondent's organization use the Survey? For example, is it used for adults, children, or both? In what languages is it administered? What supplemental items, if any, are used (*e.g.,* children with chronic conditions or others)?

2. What is working well/what are the strengths of the Survey?

3. What content areas might be missing from the Survey?

4. What content areas on the Survey are no longer relevant or useful and why?

5. Are there new topic areas the Survey should address?

6. Should the Survey be revised, what implications or barriers would there be for the commenter's organization to implement a new version of the Survey?

7. What information/documentation would be helpful to the respondent's organization in making a transition to a future version of the Survey?

AHRQ is interested in all of the questions listed above, but respondents are welcome to address as many or as few as they choose and to address additional areas of interest not listed.

This RFI is for planning purposes only and should not be construed as a policy, solicitation for applications, or as an obligation on the part of the Government to provide support for any ideas in response to it. AHRQ will use the information submitted in response to this RFI at its discretion, and will not provide comments to any respondent's submission. However, responses to the RFI may be reflected in future solicitation(s) or policies. Respondents are advised that the Government is under no obligation to acknowledge receipt of the information received or provide feedback to respondents with respect to any information submitted. No proprietary, classified, confidential or sensitive information should be included in your response. The Government reserves the right to use any non-proprietary technical information in any resultant solicitation(s). The contents of all submissions will be made available to the public upon request. Submitted materials must be publicly available or able to be made public.

Gopal Khanna,

Director.

[FR Doc. 2019–09855 Filed 5–13–19; 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 Environmental Health/Agency for Toxic Substances and Disease Registry (BSC, NCEH/ATSDR)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting for the Board of Scientific Counselors, National Center for Environmental Health/Agency for Toxic Substances and Disease Registry (BSC, NCEH/ATSDR). This meeting is open to the public, limited only by available seating. The meeting room accommodates approximately 60 people. The public is also welcome to listen to the meeting by calling 800–810–6806, passcode 8137872, limited by 75 lines. The deadline for notification of attendance is May 24, 2019. The public comment period is scheduled on June 25, 2019 from 2:30 p.m. until 2:45 p.m., EDT and June 26, 2019 from 10:10 a.m. until 10:25 a.m., EDT. Individuals wishing to make a comment during Public Comment period, please email your name, organization, and phone number by May 24, 2019 to Shirley Little at *snl7@cdc.gov.*

DATES: The meeting will be held on June 25, 2019, 8:30 a.m. to 4:00 p.m., EDT and June 26, 2019, 8:30 a.m. to 11:30 a.m., EDT.

ADDRESSES: 4770 Buford Highway, Atlanta, Georgia 30341–3717.

FOR FURTHER INFORMATION CONTACT: Shirley Little, Program Analyst, NCEH/ATSDR, CDC, 4770 Buford Highway, Mailstop F–45, Atlanta, Georgia 30341–3717, Telephone (770) 488–0577; Email *snl7@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: The Secretary, Department of Health and Human Services (HHS) and by delegation, the Director, CDC and Administrator, NCEH/ATSDR, are authorized under Section 301 (42 U.S.C. 241) and Section 311 (42 U.S.C. 243) of the Public Health Service Act, as amended, to: (1) Conduct, encourage, cooperate with, and assist other appropriate public authorities, scientific institutions, and scientists in the conduct of research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and other impairments; (2) assist states and their political subdivisions in the prevention of infectious diseases and other preventable conditions and in the promotion of health and wellbeing; and (3) train state and local personnel in health work. The BSC, NCEH/ATSDR provides advice and guidance to the Secretary, HHS; the Director, CDC and Administrator, ATSDR; and the Director, NCEH/ATSDR, regarding program goals, objectives, strategies, and

priorities in fulfillment of the agency's mission to protect and promote people's health. The board provides advice and guidance that will assist NCEH/ATSDR in ensuring scientific quality, timeliness, utility, and dissemination of results. The board also provides guidance to help NCEH/ATSDR work more efficiently and effectively with its various constituents and to fulfill its mission in protecting America's health.

Matters to be Considered: The agenda will include discussions on NCEH/ATSDR Program Responses to BSC Guidance and Action Items; PFAS Health Related Initiatives; Expanding National Laboratory Capacity to Measure Human Exposure to Synthetic Opioids; CCARE: Controlling Childhood Asthma, Reducing Emergencies; The Intersection of Place and Health: ATSDR's Geospatial Research Analysis and Services Program (GRASP); and Social Vulnerability Index (SVI) and Ethylene Oxide. Agenda items are subject to change as priorities dictate.

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.

Sherri A. Berger,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2019–09847 Filed 5–13–19; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Tribal Consultation Meetings

AGENCY: Office of Head Start (OHS), Administration for Children (ACF) and Families, Department of Health and Human Services (HHS).

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Improving Head Start for School Readiness Act of 2007, notice is hereby given of six 1-day Tribal Consultation (TC) Sessions to be held between the HHS)/ACF, OHS leadership and the leadership of tribal governments operating Head Start (including Early Head Start) programs. The purpose of these consultation sessions is to discuss ways to better meet the needs of American Indian and Alaska Native children and their families, taking into consideration funding allocations, distribution formulas, and other issues affecting the delivery of Head Start services in their geographic locations. Six TCs will be held as part of HHS/ACF and/or ACF TC Sessions.

DATES:

June 19, 2019, from 1:00 p.m. to 3:00 p.m.
June 27, 2019, from 9:00 a.m. to 12:00 p.m.
July 10, 2019, from 1:00 p.m. to 3:00 p.m.
July 16, 2019, from 1:00 p.m. to 3:00 p.m.
August 21, 2019, from 9 a.m. to 11 a.m.
September 16, 2019, Date and time to be determined

ADDRESSES:

- June 19, 2019—Sacramento, CA (Location to be provided at a later date)
- June 27, 2019—National Indian Head Start Directors Association, Scottsdale, AZ (Location to be provided at a later date)
- July 10, 2019—Spokane, WA (Location to be provided at a later date)
- July 16, 2019—Washington, DC (Location to be provided at a later date)
- August 21, 2019—Denver, CO (Location to be provided at a later date)
- September 16, 2019—Temecula, CA (Location to be provided at a later date)

FOR FURTHER INFORMATION CONTACT: Todd Lertjuntharangool, Regional Program Manager, Region XI/AIAN, Office of Head Start, email *Todd.Lertjuntharangool@acf.hhs.gov,* or phone (202) 205–9503. Additional information and online meeting registration will be available at *http://eclkc.ohs.acf.hhs.gov/hslc/hs/calendar/tc2019.*

SUPPLEMENTARY INFORMATION: In accordance with the Improving Head Start for School Readiness Act of 2007, Public Law 110–134 [42 U.S.C. 9835, § 640(l)(4)], ACF announces OHS tribal consultations for leaders of tribal governments operating Head Start and Early Head Start programs. The agenda for the scheduled OHS tribal consultations in Sacramento, California; Scottsdale, Arizona; Spokane, Washington; Washington, DC; Denver, Colorado; and Temecula, California will be organized around the statutory purposes of Head Start tribal consultations related to meeting the needs of American Indian and Alaska Native children and families, taking into consideration funding allocations, distribution formulas, and other issues affecting the delivery of Head Start services in their geographic locations. In addition, OHS will share actions taken and in progress to address the issues and concerns raised in the 2018 OHSTCs.

The consultation sessions will be conducted with elected or appointed leaders of tribal governments and their designated representatives. Designees must have a letter from the tribal government authorizing them to represent the tribe. Tribal governments must submit the designee letter at least 3 days in advance of the consultation sessions to Todd Lertjuntharangool at *Todd.Lertjuntharangool@acf.hhs.gov.* Other representatives of tribal organizations and Native non-profit organizations are welcome to attend as observers.

A detailed report of each consultation session will be prepared and made available within 45 days of the consultation sessions to all tribal governments receiving funds for Head Start and Early Head Start programs. Tribes wishing to submit written testimony for the report should send testimony to Todd Lertjuntharangool at *Todd.Lurtjuntharangool@acf.hhs.gov* either prior to each consultation session or within 30 days after each meeting. OHS will summarize oral testimony and comments from the consultation sessions in each report without attribution, along with topics of concern and recommendations.

Dated: May 7, 2019.

Deborah Bergeron

Director, Office of Head Start.

[FR Doc. 2019–09927 Filed 5–13–19; 8:45 am]

BILLING CODE 4184–40–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–D–0154]

Considerations in Demonstrating Interchangeability With a Reference Product; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry entitled ''Considerations in Demonstrating Interchangeability With a Reference Product.'' This guidance is intended to

assist sponsors in demonstrating that a proposed therapeutic protein product is interchangeable with a reference product for the purposes of submitting a marketing application or supplement under the Public Health Service Act (PHS Act). This guidance is one in a series of guidances that FDA has developed to implement the Biologics Price Competition and Innovation Act of 2009 (BPCI Act).

DATES: The guidance was posted to the Agency's website on May 10, 2019.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2017–D–0154 for ''Considerations in Demonstrating Interchangeability With a Reference Product.'' 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 this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Sandra Benton, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 6522, Silver Spring, MD 20993–0002, 301–796–1042; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Considerations in Demonstrating Interchangeability With a Reference Product.'' This guidance is intended to assist sponsors in demonstrating that a proposed therapeutic protein product (proposed interchangeable product) is interchangeable with a reference product for the purposes of submitting a marketing application or supplement under section 351(k) of the PHS Act (42 U.S.C. 262(k)).

Section 351(k) of the PHS Act sets forth the requirements for an application for a proposed biosimilar product and for an application or a supplement for a proposed interchangeable product. Specifically, section 351(k)(4) provides that upon review of an application submitted under section 351(k), or any supplement to such application, FDA will determine the biological product to be interchangeable with the reference product if FDA determines that the information submitted in the application (or supplement) is sufficient to show that the biological product is biosimilar to the reference product and can be expected to produce the same clinical result as the reference product in any given patient; and for a biological product that is administered more than once to an individual, the risk in terms of safety or diminished efficacy of alternating or switching between use of the biological product and the reference product is not greater than the risk of using the reference product without such alternation or switch. Section 351(i) of the PHS Act states that the term interchangeable or interchangeability, in reference to a

biological product that is shown to meet the standards described in section 351(k)(4), means that the biological product may be substituted for the reference product without the intervention of the healthcare provider who prescribed the reference product.

This guidance gives an overview of important scientific considerations in demonstrating interchangeability with a reference product, including:

- The data and information recommended to support a demonstration of interchangeability
- Considerations for the design and analysis of a switching study or studies to support a demonstration of interchangeability
- Considerations regarding the comparator product in a switching study or studies
- Abbreviated considerations for developing presentations, container closure systems, and delivery device constituent parts for proposed interchangeable products

This guidance finalizes the draft guidance issued on January 18, 2017. Changes made to the guidance took into consideration the comments received. FDA provided changes to clarify its recommendations for demonstrating interchangeability with the reference product. FDA intends to provide more detailed recommendations on the data and information recommended to support the proposed interchangeable product's presentation and related issues in a separate guidance.

In the **Federal Register** of January 18, 2017 (82 FR 5579), FDA announced the availability of the draft guidance for industry ''Considerations in Demonstrating Interchangeability With a Reference Product.'' FDA requested comment on the following questions: (1) Are there considerations in addition to comparability assessments that FDA should consider in regulating post-approval manufacturing changes of interchangeable products and (2) how, if at all, should the Agency consider conditions of use that are licensed for the reference product after an interchangeable product has been licensed. The comments submitted in response to these questions are being considered; FDA will address these topics in future guidance, as appropriate.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Considerations in Demonstrating Interchangeability With a Reference Product.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations. This guidance is not subject to Executive Order 12866.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information under 21 CFR part 312 have been approved under OMB control number 0910–0014; the collections of information under 21 CFR part 601 have been approved under OMB control number 0910–0338; and the collections of information under section 351(k) of the PHS Act have been approved under OMB control number 0910–0719.

III. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, https://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm,* or *https://www.regulations.gov.*

Dated: May 10, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–10001 Filed 5–10–19; 11:15 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Privacy Act of 1974; System of Records Notice

AGENCY: Office of the Secretary of Health and Human Services (OS), Department of Health and Human Services (HHS).

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, HHS is revising a department-wide system of records, System No. 09–90–1601 titled Outside Experts Recruited for Non-FACA Activities, to add records about outside consultants used by HHS' Administration for Children and Families, Office of Trafficking in Persons (ACF/OTIP).

DATES: The modified system of records is effective June 13, 2019, with the exception of the new and revised routine uses. The new and revised routine uses will be effective 30 days after publication of this notice, unless comments are received that warrant a revision to this notice. Comments should be submitted within 30 days of publication, but may be made at any time.

ADDRESSES: The public should submit written comments by mail or email to Beth Kramer, HHS Privacy Act Officer, FOIA/PA Division, Hubert H. Humphrey Bldg., Ste. 729H, 200 Independence Ave. SW, Washington, DC 20201, or *beth.kramer@hhs.gov.*

FOR FURTHER INFORMATION CONTACT: General questions about the modified system of records may be submitted by mail or email to Beth Kramer, HHS Privacy Act Officer, FOIA/PA Division, Hubert H. Humphrey Bldg., Ste. 729H, 200 Independence Ave. SW, Washington, DC 20201, or *beth.kramer@hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Explanation of Modifications Made to System No. 09–90–1601

This department-wide system of records covers records about individuals outside the HHS workforce who serve or are considered for service on mission-related committees and other activities (such as peer review programs) which require specific expertise or experience but are not subject to the Federal Advisory Committee Act (FACA), 5 U.S.C. App., *et seq.* The system of records has been modified to add the following records maintained by the Administration for Children and Families' Office on Trafficking in Persons (ACF/OTIP):

- *Consultants on Office on Trafficking in Persons (OTIP) projects.* ACF/OTIP contractors arrange for outside consultants to be used in OTIP programs (in addition to peer review programs) when technical assistance is needed in conferences, meetings, and evaluation projects that involve a specialized area of research, review, or advice.

The ACF/OTIP consultant records are similar in type and function to the other records currently covered by System No. 09–90–1601; *i.e.,:*

- *Curricula Vitae of Consultants to the National Center for Health Statistics (NCHS) within the Centers for Disease Control and Prevention (CDC/NCHS) (formerly covered under SORN 09–20–0168).* This program maintains records about individuals with special expertise, training, and professional experience who may be enlisted to assist CDC/NCHS as consultants. The records are used by CDC/NCHS to select individuals to participate in

assignments such as: Planning and conducting surveys, studies, statistical reporting programs, and statistical analyses of data; providing training and technical assistance; and planning and conducting conferences.

• *The Food and Drug Administration (FDA) Patient Representative Program.* This program enlists individuals with patient advocacy experience to serve as patient representatives on both FACA committees and non-FACA assignments. For example, patient representatives may provide input that is used in making decisions to approve devices or drugs, or may contribute to discussions at presentations and conferences. Records about patient representatives are retrieved by the representatives' names, and are covered under either SORN No. 09–90–0059 or SORN No. 09–90–1601, depending on whether the records pertain to service on a FACA committee or service on a non-FACA assignment.

• *Peer Review Programs at the Administration for Children and Families (ACF), Health Resources and Services Administration (HRSA), and Substance Abuse and Mental Health Services Administration (SAMHSA) that recruit and use outside individuals to serve on peer review committees formed to review applications for grants and cooperative agreements.* These programs exist in several HHS components, but only ACF, HRSA, and SAMHSA sometimes use a personal identifier (*i.e.,* name) to retrieve administrative records about the outside individuals they recruit and use. Other components (including the Office of the Assistant Secretary for Health (OASH), Centers for Medicare & Medicaid Services (CMS), and National Institutes of Health (NIH)) use only non-personal identifiers (*e.g.,* expertise type, or funding opportunity announcement number) for retrieval.

• *Consultants on Other SAMHSA Projects.* SAMHSA contractors arrange for outside consultants to be used in other SAMHSA programs (besides peer review programs) when technical assistance is needed in conferences, meetings, and evaluation projects that involve a specialized area of research, review, or advice.

The System of Records Notice (SORN) for System No. 09–90–1601 has been reformatted to comply with OMB Circular A–108, issued December 23, 2016, and has been revised as follows to cover ACF/OTIP consultant records:

• The System Manager(s) section and Records Location section have been updated to identify the component responsible for ACF/OTIP consultant records.

• The Authority section now includes the legal authorities applicable to ACF/OTIP consultant records.

• The Categories of Individuals section has been revised to add ''human trafficking'' to the list of examples of outside experts' areas of expertise or experience.

• In the Categories of Records section, ''[d]ates and descriptions of current assignments'' has been added to the list of data elements that may be contained in the records.

• Routine use 7 has been revised to remove the following unnecessary wording: ''and that, therefore, the use of such records by the DOJ, court or other tribunal is deemed by HHS to be compatible with the purpose for which the agency collected the records.'' The wording is unnecessary because a routine use is defined in subsection (a)(7) of the Privacy Act as a disclosure of a record for a use that is compatible with the purpose for which the record was collected.

Because some of these revisions are significant, a report on the modified system of records was sent to Congress and OMB in accordance with 5 U.S.C. 552a(r).

Dated: May 8, 2019.

Michael S. Marquis,

Director, FOIA/Privacy Act Division, Assistant Secretary for Public Affairs.

Dated: May 8, 2019.

Anita E. Alford,

Chief Information Security Officer and OpDiv Senior Officer for Privacy, Office of the Chief Information Officer, Administration for Children and Families.

SYSTEM NAME AND NUMBER

Outside Experts Recruited for Non-FACA Activities, 09–90–1601.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The address of each agency component responsible for the system of records is provided in the System Manager(s) section. Records locations include:

▪ CDC program offices that recruit consultants to assist in statistical projects and reporting programs conducted or sponsored by NCHS, in Atlanta, GA and Hyattsville, MD;

▪ FDA's committee management office in Silver Spring, MD;

▪ Program offices at ACF in Washington, DC, at HRSA in Rockville, MD, and at SAMHSA in Rockville, MD, that recruit individuals to serve as peer reviewers; and

▪ Locations of SAMHSA contractors that arrange use of consultants on SAMHSA projects, and locations of ACF/OTIP contractors that arrange use of consultants on OTIP projects.

SYSTEM MANAGER(S):

For CDC/NCHS Consultant Records: Centers for Disease Control and Prevention (CDC), Director, National Center for Health Statistics, OPHSS, Prince George's Metro IV Bldg., Rm. 7209, MS P08, 3311 Toledo Rd., Hyattsville, MD 20782, (301) 458–4000.

For FDA Patient Representative Records: Food and Drug Administration (FDA), Advisory Committee Oversight & Management Staff, 10903 New Hampshire Ave., Bldg. WO32, Rm. 5129, Silver Spring, MD 20993–002, (301) 443–0572.

For ACF Peer Reviewer Records: Administration for Children and Families (ACF), Privacy Act Contact, Office of the Chief Information Officer, 330 C St. SW, Washington, DC 20201, *OCIO.Privacy@acf.hhs.gov,* (202) 401–4628.

For HRSA Peer Reviewer Records: Health Resources and Services Administration (HRSA), Chief, Policy, Analysis & Training Branch, Division of Independent Review, Office of Federal Assistance Management, 5600 Fishers Ln., Rockville, MD 20857, (301) 443–4767.

For SAMHSA Peer Reviewer Records: Substance Abuse and Mental Health Services Administration (SAMHSA), Director, Division of Grant Review, 5600 Fishers Ln., Rockville, MD 20852, (240) 276–1199.

For Other Consultant Records, Maintained by SAMHSA Contractors: Substance Abuse and Mental Health Services Administration (SAMHSA), Director, Division of Contracts Management, Office of Program Services, 5600 Fishers Ln., Rockville, MD 20852, (240) 276–1500.

For Other Consultant Records, Maintained by ACF/OTIP Contractors: Office on Trafficking in Persons (OTIP), Deputy Director, Mary E. Switzer Building, 330 C St. SW, Washington, DC 20201, (202) 401–9372.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

For CDC/NCHS Consultant Records: 42 U.S.C. 242b(b)(3).

For FDA Patient Representative Records: 21 U.S.C. 360bbb–8c, 371 *et seq.,* 379d–1(b)(1)(A).

For ACF Peer Reviewer Records: 42 U.S.C. 799(f), 806(e).

For HRSA Peer Reviewer Records: 42 U.S.C. 799(f), 806(e).

For SAMHSA Peer Reviewer and Other Consultant Records: 42 U.S.C. 241, 249(c), 290aa *et seq.,* 290aa–5, 290bb *et seq.,* 290bb–21 *et seq.,* 290bb–

31 *et seq.,* 5121 *et seq.,* 10801 *et seq.;* 8 U.S.C. 1522 note; Executive Order 12341.

For OTIP Consultant Records: 22 U.S.C. 7104(b), 7105(b)(1)(G), (c)(4), and (f); 42 U.S.C. 1314b.

See also: 5 U.S.C. 3109.

PURPOSE(S):

The records are used within the agency on a need-to-know basis for the purpose of staffing committees and other assignments and managing administrative matters pertaining to individuals serving on committees and other assignments, including to:

- Prepare reports and lists of past, present, and recommended members, vacancies, acceptances, and separations;
- Send recruitment notices to individual prospective candidates, and send informational notices to selectees;
- Identify qualified candidates and document the selections; and
- Manage and coordinate the selected individuals' participation in assignment activities (including sharing information within the agency to coordinate aspects such as badging, parking, travel, training, and payment of any stipend or honorarium).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records in this system pertain to individuals outside the HHS workforce who serve or are considered for service on HHS mission-related committees or other assignments that require specific outside expertise or experience (for example, medical, scientific, manufacturing, or human trafficking expertise, or patient advocacy experience), but that are not subject to the Federal Advisory Committee Act (FACA), 5 U.S.C. App., *et seq.*

CATEGORIES OF RECORDS IN THE SYSTEM:

The records consist of recruitment and other administrative records, including:

- An application and resume or curricula vitae, describing the individual's qualifications;
- Nomination/recommendation records, or other records used in evaluating an individual's qualifications and any potential conflicts of interest and selecting an individual for a specific assignment; and
- Records used to plan and arrange the individual's participation in the assigned activities, including scheduling records and records used to coordinate parking, badging, and payment of any stipend or honorarium.

The records may contain these data elements:

- The individual's name and other identifying information (*e.g.,* sex, place and date of birth);
- Contact information (*e.g.,* home and business addresses, telephone numbers, email addresses);
- Occupation, job titles, employers, employment status and history, and whether currently employed by the federal government;
- Work and organizational affiliations, memberships, credentials, and licenses;
- Degrees held, and general educational and/or experience background;
- Racial classification or ethnic background;
- Areas of specialization, expertise, or experience, and special qualifications (*e.g.,* language or technical skills, ability to drive to an assignment);
- Dates and descriptions of past assignments or past experience;
- Dates and descriptions of current assignments;
- Sources and references, and any information provided by sources/references; and
- Information about availability and any special needs.

Any special needs, medical condition, or similar information contained in an individual's records is maintained and used in accordance with relevant provisions of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791 *et seq.,* and implementing regulations at 29 CFR parts 1614 and 1630, and the Genetic Information Nondiscrimination Act of 2008 at 42 U.S.C. 2000ff *et seq.*

RECORD SOURCE CATEGORIES:

Most information is obtained directly from the individual record subject. Information pertaining to references and recommendations is obtained from other private individuals, educational institutions, current and former employers, HHS program personnel, biographical reference books, private organizations, members of Congress, and other government sources.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

HHS may make the following disclosures of information about an individual record subject from this system of records to parties outside the agency without the individual's prior, written consent:

1. Disclosures may be made to federal agencies and Department contractors that have been engaged by HHS to assist in accomplishment of an HHS function relating to the purposes of this system of records and that have a need to have access to the records in order to assist HHS in performing the activity. Any contractor will be required to comply with the requirements of the Privacy Act.

2. Records may be disclosed to parties such as educational institutions, current and former employers, and qualified experts, when necessary to check or obtain an opinion about a candidate's qualifications.

3. Records about consultants and patient advocates may be disclosed to parties organizing or hosting assignment activities, such as grantee institutions and federal, foreign, state, tribal, local, and other government agencies and public authorities (*e.g.,* U.S. Embassies and Ministries of Health), when necessary to apprise them of an individual's qualifications for the assignment or coordinate the individual's participation in the activities.

4. Records may be disclosed to supervisors and administrative assistants at the individual's place of employment, for administrative purposes such as coordinating the individual's participation in the activities.

5. Records may be disclosed to external parties that audit committee or assignment activities.

6. Relevant information will be included in any required reports to the President, the Office of Management and Budget (OMB), and the General Services Administration (GSA) about committees and other assignments that are mission-related.

7. Information may be disclosed to the U.S. Department of Justice (DOJ) or to a court or other tribunal, when:

a. The agency or any component thereof, or

b. Any employee of the agency in his or her official capacity, or

c. Any employee of the agency in his or her individual capacity where DOJ has agreed to represent the employee, or

d. The United States Government, is a party to litigation or has an interest in such litigation and, by careful review, HHS determines that the records are both relevant and necessary to the litigation.

8. Records may be disclosed to student volunteers and other individuals performing functions for the Department but technically not having the status of agency employees, if they need access to the records in order to perform their assigned agency functions.

9. Disclosures may be made to the National Archives and Records Administration (NARA) and/or the General Services Administration (GSA) for the purpose of records management

inspections conducted under 44 U.S.C. 2904 and 2906.

10. Information may be disclosed to a Member of Congress or a Congressional staff member in response to a written inquiry of the Congressional office made at the written request of the constituent about whom the record is maintained. The Congressional office does not have any greater authority to obtain records than the individual would have if requesting the records directly.

11. Records may be disclosed to the U.S. Department of Homeland Security (DHS) if captured in an intrusion detection system used by HHS and DHS pursuant to a DHS cybersecurity program that monitors internet traffic to and from federal government computer networks to prevent a variety of types of cybersecurity incidents.

12. Records may be disclosed to appropriate agencies, entities, and persons when (1) HHS suspects or has confirmed that there has been a breach of the system of records, (2) HHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, HHS (including its information systems, programs, and operations), the federal government, or national security, and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HHS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

13. Records may be disclosed to another federal agency or federal entity, when HHS determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the federal government, or national security, resulting from a suspected or confirmed breach.

The disclosures authorized by publication of the above routine uses pursuant to 5 U.S.C. 552a(b)(3) are in addition to other disclosures authorized directly in the Privacy Act at 5 U.S.C. 552a(b)(4)–(11).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored in hard-copy files and electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by the individual's name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records pertaining to recruitment and use of outside peer reviewers are destroyed three years after final action; they are retained longer if required for business use (see General Records Schedule (GRS) 1.2, Item 010, Grant and Cooperative Agreement Program Management Records). Records pertaining to recruitment and use of other outside individuals (*e.g.,* experts, patient advocates, and members of mission-related non-FACA committees) are currently unscheduled. Unscheduled records must be retained indefinitely pending the agency's submission, and NARA's approval, of a disposition schedule. HHS anticipates proposing to NARA, as an appropriate retention period for these records, ''three years after final action, or longer if required for business use'' (similar to the period provided in GRS 1.2, Item 010) or ''when no longer needed for administrative purposes'' (similar to the periods applicable to similar records not retrieved by personal identifier which are not covered under this SORN; *i.e.:* N1–442–93–1, Item 37 for the Agency for Toxic Substances and Disease Registry's Curriculum Vitae Files, and NC1–235–82–1, Item 100–3 for the Office of the Secretary's Advisory Committee Candidate Resume Files).

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Safeguards conform to the HHS Information Security and Privacy Program, *https://www.hhs.gov/ocio/securityprivacy/index.html.* Information is safeguarded in accordance with applicable laws, rules and policies, including the HHS Information Technology Security Program Handbook, all pertinent National Institutes of Standards and Technology (NIST) publications, and OMB Circular A–130, Managing Information As a Strategic Resource. Records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include protecting the facilities where records are stored or accessed with security guards, badges and cameras, securing hard-copy records in locked file cabinets, file rooms or offices during off-duty hours, limiting access to electronic databases to authorized users based on roles and two-factor authentication (user ID and password), using a secured operating system protected by encryption, firewalls, and intrusion detection systems, requiring encryption for records stored on removable media, and training personnel in Privacy Act and information security requirements. Records that are eligible for destruction are disposed of using destruction methods prescribed by NIST SP 800–88.

RECORD ACCESS PROCEDURES:

An individual seeking access to records about him or her in this system should submit a written request to the relevant System Manager indicated in the ''System Manager(s)'' section above. The requester must verify his or her identity by providing either a notarization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act, subject to a five thousand dollar fine.

CONTESTING RECORD PROCEDURES:

An individual seeking to amend a record about him or her in this system should contact the relevant System Manager indicated in the ''Section Manager(s)'' section, verify his or her identity in the manner indicated in the ''Record Access Procedures'' section, and reasonably identify the record, specify the information contested, state the corrective action sought, and provide the reasons for the amendment, with any supporting documentation.

NOTIFICATION PROCEDURES:

An individual who wishes to know if this system contains records about him or her should contact the relevant System Manager indicated in the ''Section Manager(s)'' section and verify his or her identity in the manner indicated in the ''Record Access Procedures'' section.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

HISTORY:

81 FR 83246 (Nov. 21, 2016), 83 FR 6591 (Feb. 14, 2018).

[FR Doc. 2019–09926 Filed 5–13–19; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Meeting of the National Clinical Care Commission

AGENCY: Office of Disease Prevention and Health Promotion, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The National Clinical Care Commission (the Commission) will

conduct its third meeting on June 27, 2019. The Commission will evaluate and make recommendations to the U.S. Department of Health and Human Services (HHS) Secretary and Congress regarding improvements to the coordination and leveraging of federal programs related to awareness and clinical care for complex metabolic or autoimmune diseases that result from issues related to insulin that represent a significant disease burden in the United States, which may include complications due to such diseases.

DATES: The meeting will take place on June 27, 2019 from 8:00 a.m. to approximately 5:00 p.m. Eastern Time (ET).

ADDRESSES: National Institutes of Health, Building 35, John Edward Porter Neuroscience Research Center [PNRC II], 35 Convent Drive, Bethesda, MD 20892. The meeting will also be held online via webcast. To register to attend the meeting, please visit the registration website at *https://events.kauffmaninc.com/events/nccc3/index.cfm.*

FOR FURTHER INFORMATION CONTACT: Clydette Powell, Designated Federal Officer, National Clinical Care Commission, U.S. Department of Health and Human Services, Office of the Assistant Secretary for Health, Office of Disease Prevention and Health Promotion, 1101 Wootton Parkway, Suite LL–100, Rockville, MD 20852. Email: *OHQ@hhs.gov.* Additional information may be obtained at *https://health.gov/hcq/national-clinical-care-commission.asp.*

SUPPLEMENTARY INFORMATION: The National Clinical Care Commission Act (Pub. L. 115–80) requires the HHS Secretary to establish the National Clinical Care Commission. The Commission will consist of representatives of specific federal agencies and non-federal individuals and entities who represent diverse disciplines and views. The Commission will evaluate and make recommendations to the HHS Secretary and Congress regarding improvements to the coordination and leveraging of federal programs related to awareness and clinical care for complex metabolic or autoimmune diseases that result from issues related to insulin that represent a significant disease burden in the United States, which may include complications due to such diseases.

This third meeting of the Commission will consist of presentations by its four subcommittees on their work to support the call for information about federal diabetes programs. The Commission members will discuss the work of the subcommittees and overall plan to collect information relevant to its charge. The names and biographies of the Commission members and final meeting agenda will be available prior to the meeting at *https://health.gov/hcq/national-clinical-care-commission.asp.*

Public Participation at Meeting: The Commission invites public comment on issues related to the Commission's charge either in-person at the meeting or in writing. In-person attendees who plan to provide oral comments at the Commission meeting during a designated time must submit their comments to *OHQ@hhs.gov* on or before June 12, 2019 and must check-in on-site. To accommodate as many individuals as possible, the time for each comment will be limited to three minutes. If more requests are received than can be accommodated, speakers will be randomly selected. The nature of the comments will not be considered in making this selection. Written comments are welcome throughout the entire development process of the Commission and may be emailed to *OHQ@hhs.gov,* or by mail to the following address: Public Commentary, National Clinical Care Commission, 1101 Wootton Parkway, Suite LL–100, Rockville, MD 20852. Written comments should not exceed three pages in length.

To attend the Commission meeting, individuals must pre-register at the registration website at *https://events.kauffmaninc.com/events/nccc3/index.cfm.* In-person and live webcast attendance options are available. In-person attendance at the meeting is limited to space available. In-person registrations will be accepted until maximum capacity is reached and must be completed by June 20, 2019. On the day of the meeting, seating will be provided first to persons who have pre-registered. Those who have not pre-registered will be accommodated on a first come, first served basis if additional seats are still available 10 minutes before the meeting starts. Individuals who need special assistance, such as sign language interpretation or other reasonable accommodations, should indicate the special accommodation when registering online or by notifying Jennifer Gillissen at *jennifer.gillissen@kauffmaninc.com* by June 20, 2019.

Authority: The National Clinical Care Commission is required under the National Clinical Care Commission Act (Pub. L. 115–80). The Commission is governed by provisions of the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C., App.) which sets forth standards for the formation and use of federal advisory committees.

Dated: May 2, 2019.

Donald Wright,

Deputy Assistant Secretary for Health.

[FR Doc. 2019–09920 Filed 5–13–19; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Meeting of the Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2030

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of the Assistant Secretary for Health, Office of Disease Prevention and Health Promotion

ACTION: Notice.

SUMMARY: The U.S. Department of Health and Human Services (HHS) announces the next meeting of the Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2030 (Committee) regarding the development of national health promotion and disease prevention objectives for 2030. The meeting will be held online via webinar and is open to the public. The Committee will discuss the nation's proposed health promotion and disease prevention objectives and will provide recommendations to improve health status and reduce health risks for the nation by the year 2030. The Committee will deliberate and prioritize its recommendations for implementing the Healthy People 2030 objectives and develop recommendations regarding graphics for communicating key Healthy People 2030 elements. Pursuant to the Committee's charter, the Committee's advice must assist the Secretary in reducing the number of objectives while ensuring that the selection criteria identifies the most critical public health issues that are high-impact priorities supported by current national data.

DATES: The Committee will meet on June 26, 2019, from 12:00 p.m. to 4:00 p.m. Eastern Time (ET).

ADDRESSES: The meeting will be held online via webinar. Registration for the June 26, 2019 meeting will open on May 23, 2019 at the Healthy People website at *http://www.healthypeople.gov.*

FOR FURTHER INFORMATION CONTACT: Emmeline Ochiai, Designated Federal Officer, Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2030, U.S. Department of Health and Human

Services, Office of the Assistant Secretary for Health, Office of Disease Prevention and Health Promotion, 1101 Wootton Parkway, Room LL–100, Rockville, MD 20852, (240) 453–8280 (telephone). Additional information is available on the Healthy People website at *http://www.healthypeople.gov*.

SUPPLEMENTARY INFORMATION: The names and biographies of the Committee members are available at *https://www.healthypeople.gov/2020/about/history-development/healthy-people-2030-advisory-committee*.

Purpose of Meeting: Through the Healthy People initiative, HHS leverages scientific insights and lessons from the past decade, along with new knowledge of current data, trends, and innovations, to develop the next iteration of national health promotion and disease prevention objectives. Healthy People provides science-based, 10-year national objectives for promoting health and preventing disease. Since 1979, Healthy People has set and monitored national health objectives that meet a broad range of health needs, encourage collaboration across sectors, guide individuals toward making informed health decisions, and measure the impact of our prevention and health promotion activities. Healthy People 2030 objectives will reflect assessments of major risks to health and wellness, changing public health priorities, and emerging technologies related to our nation's health preparedness and prevention. During the June 26, 2019 Committee meeting, the Committee will discuss and deliberate recommendations regarding the activities designed to implement and communicate the Healthy People 2030 objectives.

Public Participation at Meeting: Members of the public are invited to join the online Committee meeting. There will be no opportunity for oral public comments during the online Committee meeting. Written comments are welcome throughout the entire development process of the national health promotion and disease prevention objectives for 2030 and may be emailed to *HP2030@hhs.gov*.

To join the Committee meeting, individuals must pre-register at the Healthy People website at *http://www.healthypeople.gov*. Participation in the meeting is limited. Registrations will be accepted until maximum webinar capacity is reached. Registration for the June 26, 2019 meeting must be completed by 9:00 a.m. ET on June 26, 2019. A waiting list will be maintained should registrations exceed capacity, and individuals on the wait list will be contacted as additional space for the meeting becomes available. Registration questions may be directed to *HealthyPeople@norc.org*.

Authority: 42 U.S.C. 300u and 42 U.S.C. 217a. The Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2030 is governed by provisions of the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C., App.) which sets forth standards for the formation and use of federal advisory committees.

Dated: May 2, 2019.

Donald Wright,

Deputy Assistant Secretary for Health.

[FR Doc. 2019–09923 Filed 5–13–19; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Music and Brain Review Meeting.

Date: May 30–31, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Canopy by Hilton, 940 Rose Avenue, North Bethesda, MD 20814.

Contact Person: Ernest Lyons, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/DHHS, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–4056, *Lyonse@ninds.nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; HEAL: Optimization of Non-addictive Therapies [Small Molecules and Biologics] to Treat Pain.

Date: June 3–4, 2019.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Canopy by Hilton, 940 Rose Avenue, North Bethesda, MD 20814.

Contact Person: Marilyn Moore-Hoon, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/DHHS, NSC, 6001 Executive Blvd., Suite 3205, MSC 9529, Bethesda, MD 20892–9529, (301) 827–9087, *mooremar@mail.nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Diversity K Review.

Date: June 3, 2019.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Edgewater Hotel, 2411 Alaskan Way, Seattle, WA 98121.

Contact Person: William C. Benzing, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/DHHS, NSC, 6001 Executive Blvd., Suite 3204, MSC 9529, Bethesda, MD 20892–9529, (301) 496–0660, *benzingw@mail.nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; BPN Translational Neuroscience Review.

Date: June 7, 2019.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz Carlton Hotel, 1150 22nd Street NW, Washington, DC 20037.

Contact Person: Joel Saydoff, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/DHHS, NSC, 6001 Executive Blvd., Suite 3205, MSC 9529, Bethesda, MD 20892–9529, (301) 496–9223, *Joel.saydoff@nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Clinical Trial Readiness.

Date: June 24, 2019.

Time: 10:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Ana Olariu, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/DHHS, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–4056, *Ana.Olariu@nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Program Project Grant P01.

Date: July 1–2, 2019.

Time: 11:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Ana Olariu, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/DHHS, NSC, 6001 Executive

Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–4056, *Ana.Olariu@nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Brain K99/R00.

Date: July 1, 2019.

Time: 11:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Deanna Lynn Adkins, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/DHHS, NSC, 6001 Executive Blvd., Bethesda, MD 20892–9529, (301) 496–9223, *deanna.adkins@nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Summer Research Education Experience.

Date: July 18, 2019.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Contact Person: Deanna Lynn Adkins, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/DHHS, NSC, 6001 Executive Blvd., Bethesda, MD 20892–9529, (301) 496–9223, *deanna.adkins@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: May 8, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–09868 Filed 5–13–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; Resources for Technology Dis.

Date: June 11–13, 2019.

Time: 6:00 p.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Inn at Longwood Medical, 342 Longwood Ave., Boston, MA.

Contact Person: Manana Sukhareva, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, Two Democracy Boulevard, Suite 959, 6707 Democracy Blvd., Bethesda, MD 20892, 301–451–3397, *sukharen@mail.nih.gov*.

Dated: May 8, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–09870 Filed 5–13–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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 Neurological Disorders and Stroke Special Emphasis Panel; Preclinical Screening Platform for Pain review meeting.

Date: June 17, 2019.

Time: 08:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: The Alexandrian, 480 King Street, Alexandria, VA 22314.

Contact Person: Joel Saydoff, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/DHHS, NSC, 6001 Executive Blvd., Suite 3205, MSC 9529, Bethesda, MD 20892–9529, (301) 496–9223, *joel.saydoff@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: May 8, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–09863 Filed 5–13–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[Docket No. USCBP–2019–0013]

Commercial Customs Operations Advisory Committee (COAC)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security (DHS).

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The Commercial Customs Operations Advisory Committee (COAC) will hold its quarterly meeting on Thursday, May 30, 2019, in Laredo, Texas. The meeting will be open to the public to attend either in person or via webinar.

DATES: The COAC will meet on Thursday, May 30, 2019, from 1:00 p.m. to 4:00 p.m. CDT (2:00 p.m.–5:00 p.m. EDT). Please note that the meeting may close early if the committee has completed its business.

ADDRESSES: The meeting will be held at the Laredo College, Falcon Bank Executive Conference Room, 1 West End Washington Street, Laredo, Texas 78040. For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Florence Constant-Gibson, Office of Trade Relations, U.S. Customs & Border Protection, at (202) 344–1440 as soon as possible.

Pre-Registration: Meeting participants may attend either in person or via webinar after pre-registering using one of the methods indicated below:

For members of the public who plan to attend the meeting in person, please register by 5:00 p.m. EDT May 29, 2019, either: online at *https://teregistration.cbp.gov/index.asp?w=154;* by email to *tradeevents@dhs.gov;* or by fax to (202) 325–4290. You must register prior to the meeting in order to attend the meeting in person.

For CBP personnel who plan to attend in person, please register online by 5:00 p.m. EDT May 29, 2019, at *https://teregistration.cbp.gov/index.asp?w=153.*

For members of the public who plan to participate via webinar, please register online at *https://teregistration.cbp.gov/index.asp?w=155* by 5:00 p.m. EDT on May 29, 2019.

Please feel free to share this information with other interested members of your organization or association.

Members of the public who are pre-registered to attend and later need to cancel, please do so by May 29, 2019, utilizing the following links: *https://teregistration.cbp.gov/cancel.asp?w=154* to cancel an in-person registration; or use *https://teregistration.cbp.gov/cancel.asp?w=155* to cancel a webinar registration. For CBP personnel who are registered to attend in person and later need to cancel, please do so by utilizing the following link: *https://teregistration.cbp.gov/cancel.asp?w=153.*

To facilitate public participation, we are inviting public comment on the issues the committee will consider prior to the formulation of recommendations as listed in the Agenda section below.

Comments must be submitted in writing no later than May 29, 2019, and must be identified by Docket No. USCBP–2019–0013, and may be submitted by *one (1)* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: tradeevents@dhs.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 325–4290, Attention Florence Constant-Gibson.
- *Mail:* Ms. Florence Constant-Gibson, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.5A, Washington, DC 20229.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number (USCBP–2019–0013) for this action. Comments received will be posted without alteration at *http://www.regulations.gov.* Please do not submit personal information to this docket.

Docket: For access to the docket or to read background documents or comments, go to *http://www.regulations.gov* and search for Docket Number USCBP–2019–0013. To submit a comment, click the ''Comment Now!'' button located on the top right-hand side of the docket page.

There will be multiple public comment periods held during the meeting on May 30, 2019. Speakers are requested to limit their comments to two (2) minutes or less to facilitate greater participation. Contact the individual listed below to register as a speaker. Please note that the public comment period for speakers may end before the time indicated on the schedule that is posted on the CBP web page, *http://www.cbp.gov/trade/stakeholder-engagement/coac.*

FOR FURTHER INFORMATION CONTACT: Ms. Florence Constant-Gibson, Office of Trade Relations, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Room 3.5A, Washington, DC 20229; telephone (202) 344–1440; facsimile (202) 325–4290; or Mr. Bradley Hayes, Executive Director and Designated Federal Officer at (202) 344–1440.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. Appendix. The Commercial Customs Operations Advisory Committee (COAC) provides advice to the Secretary of Homeland Security, the Secretary of the Treasury, and the Commissioner of U.S. Customs and Border Protection (CBP) on matters pertaining to the commercial operations of CBP and related functions within the Department of Homeland Security and the Department of the Treasury.

Agenda

The COAC will hear from the current subcommittees on the topics listed below and then will review, deliberate, provide observations, and formulate recommendations on how to proceed:

1. The Next Generation Facilitation Subcommittee will provide an update on the status of the Emerging Technologies Working Group's use of blockchain to address challenges faced by both the government and the trade in today's complex commercial environment. The discussion will highlight the Intellectual Property Rights Blockchain Proof of Concept Project as well as discuss other upcoming projects, including a day-long event that will solicit additional ideas for blockchain concepts that could be tested in the future. Finally, the subcommittee will provide recommendations regarding blockchain proofs of concept.

2. The Secure Trade Lanes Subcommittee will present a summary of the activities of the Trusted Trader Working Group including results of the May 8th and 9th face-to-face meeting with Trusted Trader Pilot participants. The subcommittee will deliver an update on the progress of the In-Bond Working Group's recommendation for the enhancement of the CBP In-bond program, the development of in-bond regulations, and enhancements to existing in-bond guidelines. The subcommittee will deliver an update on the launch of the new Export Modernization Working Group which will be developing recommendations for CBP's expansion of current export pilots, regulatory changes that will mandate the use of electronic export manifest, and the expansion of post departure filing to new participants.

3. The Intelligent Enforcement Subcommittee will report on the work that has been conducted by the Intellectual Property Rights, Anti-Dumping and Countervailing Duty, and Bond Working Groups.

4. The Rapid Response Subcomittee will provide an update on its collaboration with CBP on furthering the strategic approach to the 21st Century Customs Framework.

Meeting materials will be available by May 28, 2019, at: *http://www.cbp.gov/trade/stakeholder-engagement/coac/coac-public-meetings.*

Dated: May 9, 2019.

Bradley F. Hayes,

Executive Director, Office of Trade Relations.

[FR Doc. 2019–09899 Filed 5–13–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAD01000 L12100000.XK0000 19XL1109AF (MO#4500133323)]

Meeting of the California Desert District Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976, and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) California Desert District Advisory Council (Council) will meet as indicated below.

DATES: The Council's next meeting will be held on June 28–29, 2019. The Council will participate in a field tour of BLM-administered public lands on Friday, June 28, 2019, from 8:30 a.m. to 5:30 p.m., and then will meet in formal session on Saturday, June 29, 2019, from 9:00 a.m. to 4:00 p.m.

ADDRESSES: The Saturday meeting will take place at the Ramada Inn, 1511 East Main Street, Barstow, California 92311. The location and agenda for the Friday field trip will be posted on the BLM web page at: *https://www.blm.gov/get-Involved/rac/california/california-desert-district,* when finalized.

Written comments may be filed in advance of the public meeting, c/o Bureau of Land Management, Public Affairs, 22835 Calle San Juan de Los Lagos, Moreno Valley, CA 92553. Written comments will also be accepted at the time of the Saturday public meeting and will be incorporated into the meeting minutes and made available on the Council's website.

FOR FURTHER INFORMATION CONTACT: Sarah K. Webster, BLM California State Office, telephone: 916–978–4622, email: *swebster@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Ms. Webster during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal hours.

SUPPLEMENTARY INFORMATION: The 15-member Council provides recommendations to the Secretary of the Interior concerning the planning and management of the public land resources located within the BLM's California Desert District and offers advice on the implementation of the comprehensive, long-range plan for management, use, development, and protection of the public lands within the California Desert Conservation Area.

All Council meetings and field trips are open to the public, but the public must provide their own transportation, meals, and beverages.

The field trip will include visits to the Cronese Lake, the Rasor Off-Highway Vehicle Recreation Area, and the Avawatz Mountains. The Saturday public meeting will include a discussion of implementation of the John D. Dingell, Jr. Conservation, Management, and Recreation Act (Dingell Act), the West Mojave Route Network Project, and off-highway vehicle recreation as they relate to the previous day's field trip.

The Saturday meeting will also include discussions on implementation of the Dingell Act in the California Desert District, updates from Council members and the BLM California Desert District Manager, and time for public comment at the beginning and end of the meeting as well as during various presentations.

While the Saturday meeting is tentatively scheduled from 9:00 a.m. to 4:00 p.m., the meeting could conclude prior to 4:00 p.m. should the Council conclude its presentations and discussions. Therefore, members of the public interested in a particular agenda item or discussion should schedule their arrival accordingly. The final agenda will be posted to the Council's website at *https://www.blm.gov/get-involved/rac/california/california-desert-district*.

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 to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 43 CFR 1784.4–2)

Benjamin E. Gruber,

Acting California Desert District Manager.

[FR Doc. 2019–09930 Filed 5–13–19; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCOF02400.L16100000. LXSSC0100000.DO0000.19X]

Notice of Intent To Prepare a Resource Management Plan and Associated Environmental Impact Statement for the Browns Canyon National Monument, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA); the Federal Land Policy and Management Act of 1976, as amended (FLPMA); and the National Forest Management Act of 1976, as amended (NFMA); the Bureau of Land Management (BLM) Royal Gorge Field Office (RGFO), Cañon City, Colorado and U.S. Forest Service (USFS), Pike-San Isabel National Forests and Comanche-Cimarron National Grasslands (PSICC), Pueblo, Colorado, intend to prepare a joint Resource Management Plan (RMP) and Forest Plan (FP) amendment, supported by an Environmental Impact Statement (EIS), for the Browns Canyon National Monument (BCNM). This notice announces the public scoping process to solicit comments and identify issues for BLM and USFS consideration in the EIS. The management plan will revise a portion of the existing Royal Gorge RMP and amend the Pike-San Isabel National Forests and Comanche-Cimarron National Grasslands FP.

DATES: This notice initiates the public scoping process for the RMP–FP and EIS. Comments on issues may be submitted in writing until June 13, 2019. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local media, newspapers and the BLM website at: *https://go.usa.gov/xn2eC.* In order to be considered in the Draft EIS, all comments must be received prior to the close of the 30-day scoping period or 15 days after the last public meeting, whichever is later. The BLM and USFS will provide additional opportunities for public participation upon publication of the Draft EIS.

ADDRESSES: You may submit comments on issues and planning criteria related to the BCNM RMP–FP and EIS by the following methods:

- *Electronically via the BLM ePlanning website: https://go.usa.gov/xn2eC*
- *Hard copy via mail to:* BCNM RMP/EIS, 5575 Cleora Road, Salida, CO 81201

Documents pertinent to this proposal may be examined at the RGFO, 3028 E. Main St., Cañon City, Colorado 81212, at the PSICC Salida Ranger District, 5575 Cleora Road, Salida, CO 81201, or on the BLM ePlanning website at *https://go.usa.gov/xn2eC.*

FOR FURTHER INFORMATION CONTACT: Joseph Vieira, Project Manager, telephone 719–246–9966; address 5575 Cleora Road, Salida, Colorado 81201; email *blm_co_brownscanyon@blm.gov.* Contact Mr. Vieira at *blm_co_brownscanyon@blm.gov* to add your name to our mailing list. 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, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM RGFO and USFS PSICC intend to prepare a joint RMP/FP and EIS for the BCNM, announces and initiates the public scoping process, and seeks public input on issues and planning criteria. The USFS published a Notice of Intent to begin the Plan Assessment Phase of its planning process on April

17, 2017, consistent with 36 CFR 219 Subpart B. The planning area is located in Chaffee County, Colorado and encompasses approximately 21,600 acres (9,790 acres on BLM and 11,810 acres on USFS) of public land and national forest. The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, develop alternatives and guide the planning process. Preliminary issues for the planning area have been identified by the BLM and USFS personnel; Federal, State, and local agencies; and other stakeholders. The issues include: Managing for sustainable outdoor recreation, visitor growth and visitor enjoyment; conserving and protecting monument resources and objects or values including bighorn sheep, peregrine falcon, terrestrial and avian wildlife habitat, cultural and historical resources, geological features and riparian values; understanding and addressing tribal values; and addressing existing uses such as livestock grazing. Preliminary planning criteria include: Compliance with FLPMA, NFMA, NEPA, and other applicable laws and regulations; consultation and coordination with Native American Tribes with due consideration to Tribal concerns; incorporate the BLM Colorado Standards for Public Land Health and USFS planning criteria; management decision consistency across agency boundaries within the BCNM and with other contiguous public lands; continue managing Wilderness Study Areas under the Interim Management Policy for Lands under Wilderness Review until Congress acts on a designation or releases lands from consideration; recognize valid existing land-use and ownership rights; include adaptive management criteria to explore alternative ways to meet future management objectives; comply with existing plans and policies of adjacent local, State, Federal agencies and local Native American Tribes to the extent practicable; and use the best available scientific information and research where practicable for the planning effort.

The BLM and USFS will evaluate identified issues to be addressed in the plan, and will place them into one of three categories:

1. Issues to be resolved in the plan;
2. Issues to be resolved through policy or administrative action; or
3. Issues beyond the scope of this plan.

The BLM and USFS will provide an explanation in the Draft RMP–FP and Draft EIS as to why an issue was placed in category two or three. The public is encouraged to help identify any management questions and concerns that should be addressed in the plan. The BLM and USFS will work collaboratively with interested parties to identify management decisions best suited to local, regional, and national needs and concerns. The BLM and USFS use and coordinate the NEPA scoping process to help fulfill the public involvement process under the National Historic Preservation Act (54 U.S.C. 306108) as provided in 36 CFR 800.2(d)(3). The information about historic and cultural resources within the area potentially affected by the proposed action will assist the BLM and USFS in identifying and evaluating impacts to such resources.

The BLM and USFS will consult with Native American Tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Native American trust assets and potential impacts to cultural resources, will be given due consideration. Federal, State, and local agencies, along with Tribes and other stakeholders that may be interested in or affected by the proposed action that the BLM and USFS are evaluating, are invited to participate in the scoping process and, if eligible, may request or may be requested by the BLM and USFS to participate in the development of the environmental analysis as a cooperating agency. The BLM and USFS will use a joint interdisciplinary approach to develop the plan in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process: Outdoor recreation, wildlife and fisheries, threatened and endangered species; vegetation; invasive and noxious weeds; rangeland management; forestry; soils; hydrology; riparian systems; cultural resources and Native American interests; minerals and geology; fire ecology and management; paleontology; lands and realty; sociology and economics; visual resource management; law enforcement; and geographic information systems.

You may submit comments on issues and planning criteria in writing to the BLM at any public scoping meeting, or you may submit them to the BLM using one of the methods listed in the **ADDRESSES** section above. To be most helpful, you should submit comments by the close of the 30-day scoping period or within 15 days after the last public meeting, whichever is later.

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 1501.7, 43 CFR 1610.2.

Jamie E. Connell,

BLM Colorado State Director.

[FR Doc. 2019–09837 Filed 5–13–19; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[19X.LLAKA02000.L16100000.DS0000. LXSS0L3I0000.241A]

Notice of Availability of the Supplemental Draft Environmental Impact Statement for the Haines Amendment to the Ring of Fire Resource Management Plan; Notice of Public Meeting

AGENCY: Bureau of Land Management, Interior

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM), Glennallen Field Office is issuing for public comment the Supplemental Draft Environmental Impact Statement (EIS) for the Haines Amendment to the Ring of Fire Resource Management Plan. BLM Alaska will hold a public meeting in Haines to receive comments on the Haines Amendment Supplemental Draft EIS. The Supplemental Draft EIS will supplement the December 2012 Draft Resource Management Plan Amendment/Draft Environmental Impact Statement for the Haines Planning Area that originally analyzed which, if any, designations and associated management practices best fulfill the resource needs and multiple use demands within the Haines Planning Area.

DATES: To ensure that the BLM will consider your comments on the Haines Amendment Supplemental Draft EIS, BLM Alaska must receive your comments no later than August 1, 2019, which is 90 days after the Environmental Protection Agency published its notice of availability of the Haines Amendment Supplemental Draft EIS in the **Federal Register**. BLM Alaska will announce the date, time, and location of the public meeting in Haines on its website, through public notices, media news releases, and/or mailings.

ADDRESSES: You may provide comments by mail, email, online through ePlanning or in person. Mail comments to: Bureau of Land Management, Anchorage District Office, Attn: Haines Amendment, 4700 BLM Road, Anchorage, Alaska 99507, email comments to *blm_ak_afo_rof_amend@blm.gov,* or submit comments on BLM's ePlanning website. A link to Haines Amendment ePlanning page can be found on the project website at *www.blm.gov/alaska/rof-haines-amendment.* You may also review copies of the Haines Amendment Supplemental Draft EIS at the Glennallen Field Office or request a CD or paper copy of the Haines Amendment Supplemental Draft EIS by contacting Bruce Loranger, BLM project lead, at 907–267–1221.

FOR FURTHER INFORMATION CONTACT: Bruce Loranger, BLM Anchorage District Office, 907–267–1221. People who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Haines Amendment Supplemental Draft EIS analyzes which, if any, designations and associated management practices best fulfill the resource needs and multiple-use demands on approximately 326,000 acres of BLM-managed public lands within the Haines Planning Area. BLM has considered new information and developed supplemental alternatives to the previous Ring of Fire Draft Resource Management Plan Amendment. Decisions to be made include whether to retain or change special land area designations, whether to retain a monitor and control area for wildlife studies, and whether to establish a maximum number of annual helicopter landings on these BLM-managed public lands. The Ring of Fire Resource Management Plan was completed in 2006, but it did not address issues related to heli-skiing or its possible impacts to mountain goat habitat. Lynn Canal Conservation (LCC) filed a protest on the Final EIS for the Ring of Fire RMP because its recommendation for an Area of Critical Environmental Concern (ACEC) in the Haines Planning Area was not carried forward. LCC asserted a need for an ACEC due to the area's goat populations. The BLM's Record of Decision (ROD) for the Ring of Fire RMP issued in March 2008 acknowledged LCC's protest, but deferred action on an ACEC designation to a later planning effort. The BLM initiated a plan amendment in 2009 to address the commitment in the ROD, but that planning effort was paused because data was needed on goat and bear habitat for analysis of a proposed ACEC. The BLM funded a multi-year study of goat and bear habitat in the Haines area by the Alaska Department of Fish and Game which was completed in 2017. A nomination was received from both LCC and Chilkat Tribal Village for ACECs. An ACEC—Research Natural Area (RNA) of 77,797 acres in the North Block of the planning area is being considered. If approved, the ACEC would preclude the issuing of special recreation permits for helicopters and UAS (Unmanned Aerial System) use within the area. An ACEC would also restrict placement or construction of structures within the designated area and include a Right-of-Way (ROW) avoidance area. Portions of the ACEC–RNA on Takshanuk Ridge would be a ROW exclusion area and no surface disturbing activities would occur on these lands. Off-Road Vehicles used in support of military, fire, emergency, or law enforcement purposes, as well as any vehicle whose use is expressly authorized by the authorized officer (43 CFR part 8340.0–7) is exempt from the ACEC–RNA limitations. This amendment would resolve conflicts among heli-skiing Special Recreation Permit holders and others by providing a consistent approach to recreation management while balancing the need for wildlife habitat. The BLM is using data from the recently completed study of goat and bear habitat in the Haines Area to address concerns about wildlife populations while allowing the expansion of helicopter-supported recreation. BLM Alaska will hold a public meeting on the Haines Amendment Supplemental Draft EIS in Haines at a date and location to be announced.

Before including your address, phone number, email address, or other personally identifying information in your comment, you should be aware that your entire comment—including your personally identifying information—may be made publicly available at any time. While you can ask the BLM in your comment to withhold your personally identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 16 U.S.C. 3120(a); 40 CFR 1506.6(b).

Chad B. Padgett,

State Director, Alaska.

[FR Doc. 2019–09931 Filed 5–13–19; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NCR–WHHO–SSB–NPS0027381; PPNCWHHOP0, PPMVSIE1Z.I00000 (199); OMB Control Number 1024–0277]

Agency Information Collection Activities; National Park Service President's Park National Christmas Tree Music Program Application

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 July 15, 2019.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Phadrea Ponds, Acting, NPS Information Collection Clearance Officer, 1201 Oakridge Drive Fort Collins, CO 80525; or by email at *phadrea_ponds@nps.gov;* or by telephone at 970–267–7231. Please reference OMB Control Number 1024–0277 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Katie Wilmes, National Park Service, Chief of Interpretation, President's Park, by mail at 1100 Ohio Drive SW, Rm 344, Washington, DC 20242; or by email at *Katie_Wilmes@nps.gov;* or by telephone at 202–208–1778.

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.

We are soliciting comments on the proposed Information Collection

Request (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 Park Service (NPS) Organic Act of 1916 (Organic Act) (54 U.S.C. 100101 *et seq.*) gives the NPS broad authority to regulate the use of the park areas under its jurisdiction. Consistent with the Organic Act, as well as the Constitution's Establishment Clause which mandates government neutrality and allows the placement of holiday secular and religious displays, the National Christmas Tree Music Program's holiday musical entertainment may include both holiday secular and religious music. To ensure that any proposed music selection is consistent with the Establishment Clause, and presented in a prudent and objective manner as a traditional part of the culture and heritage of this annual holiday event, it must be approved in advance by the NPS.

The NPS National Christmas Tree Music Program at President's Park is intended to provide musical entertainment for park visitors during December on the Ellipse, where in celebration of the holiday season, visitors can observe the National Christmas Tree, visit assorted yuletide displays, and attend musical presentations. Each year, park officials accept applications from musical groups who wish to participate in the annual National Christmas Tree Program. The NPS utilizes Form 10–942, ''National Christmas Tree Music Program Application'' to accept applications from the public for participation in the program. Park officials utilize the following information from applicants in order to select, plan, schedule, and contact performers for the National Christmas Tree Program:

- Contact name, phone number, and email.
- Group name and location (city, state).
- Preferred performance dates and times.
- Music selections/song list.
- Equipment needs.
- Number of performers.
- Type of group (choir, etc.).
- Acknowledgement of the musical entertainment policy.

Title of Collection: National Park Service President's Park National Christmas Tree Music Program Application.

OMB Control Number: 1024–0277.

Form Number: NPS Form 10–942, ''National Christmas Tree Music Program Application''.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Local, national, and international bands, choirs, or dance groups.

Total Estimated Number of Annual Respondents: 75 (2 individuals and 73 private sector).

Total Estimated Number of Annual Responses: 75 (2 individuals and 73 private sector).

Estimated Completion Time per Response: 15 minutes.

Total Estimated Number of Annual Burden Hours: 19.

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 response	Estimated completion time per response (min)	Estimated total annual burden (hours)
NPS Form 10–942 ''National Christmas Tree Music Program Application	75	15	19

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. 2019–09903 Filed 5–13–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRSS–BRD–SSB–NPS0027380; PPWONRADB0 PPMRSNR1Y.NM00000 199; OMB Control Number 1024–0265]

Agency Information Collection Activities; NPS Institutional Animal Care and Use Committee (IACUC) General Submission, Exhibitor, Annual Review, and Amendment Forms

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 with revisions.

DATES: Interested persons are invited to submit comments on or before July 15, 2019.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Phadrea Ponds, Acting, NPS Information Collection Clearance Officer, 1201 Oakridge Drive, Fort Collins, CO 80525; or by email at *phadrea_ponds@nps.gov;* or by telephone at 970–267–7231. Please reference OMB Control Number 1024–0265 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Aaron Smith, NPS IACUC Administrator by mail at

Biological Resource Division, 1201 Oakridge Drive, Suite 200, Fort Collins, CO 80525; or by email at *aaron_d_smith@nps.gov.* You may also contact Tracy Thompson by email at *tracy_thompson@nps.gov.*

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.

We are 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: Pursuant to the Animal Welfare Act (AWA), its Regulations (AWAR), and the Interagency Research Animal Committee (IRAC), any entity or institution that uses vertebrate animals for research, testing, or training purposes must have an oversight committee to evaluate all aspects of that institution's animal care and use. To be in compliance, the NPS is responsible for managing and maintaining an Institutional Animal Care and Use Committee (IACUC) that provides the experience and expertise necessary to assess and approve all research, testing, or training activities involving vertebrate animals on NPS managed lands and territories. All research, testing, or training projects involving animals taking place on NPS territories must be approved by the NPS IACUC prior to their commencement.

Principal Investigators (PI) are required to submit one of the following forms for consideration by the committee:

- IACUC General Submission (GS) Form (NPS Form 10–1301)
- IACUC Amendment Form (NPS Form 10–1301A)
- IACUC Annual Review Form (NPS Form 10–1302)
- IACUC Concurrence Form (NPS Form 10–1303)
- IACUC Field Study Form (NPS Form 10–1304)

As determined by the AWA, The NPS Institutional Animal Care and Use Committee (NPS IACUC), is a self-regulating entity that currently consists of a Chair, NPS Regional members, and two additional posts (a veterinarian to serve as the ''Attending Veterinarian'' and another individual to serve as the ''Unaffiliated Member At-Large'').

Title of Collection: NPS Institutional Animal Care and Use Committee (IACUC) General Submission, Annual Review, Concurrence, Field Study, and Amendment Forms.

OMB Control Number: 1024–0265.

Form Numbers: NPS Forms 10–1301, 10–1301A, and 10–1302 through 10–1304.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: State and local governments; nonprofit organizations and private businesses.

Respondent's Obligation: Mandatory.

Frequency of Collection: One time; on occasion.

Total Estimated Annual Nonhour Burden Cost: None.

Activity/requirement	Estimated number of annual responses	Completion time per response (hours)	Estimated total annual burden hours
IACUC General Submission Form (NPS Form 10–1301):			
Private Businesses and nonprofit organizations	10	3	30
State and local governments	14	3	42
IACUC Amendment Form (NPS Form 10–1301A):			
Private Businesses and nonprofit organizations	10	.25	3
State and local governments	10	.25	3
IACUC Annual Review Form (NPS Form 10–1302):			
Private Businesses and nonprofit organizations	40	.25	10
State and local governments	55	.25	14
IACUC Concurrence Form (NPS Form 10–1303):			
Private Businesses and nonprofit organizations	30	.25	8
State and local governments	41	.25	10
IACUC Field Study/BioBlitz Form (NPS Form 10–1304):			
Private Businesses and nonprofit organizations	10	1	10
State and local governments	10	1	10
Total	230	.....	140

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. 2019–09901 Filed 5–13–19; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–PVE–LWCF–NPS0027444; 1 PPWOSLAD00 PCA00SA82.Y00000 19XP503582 (PS.SSLAD0019.00.1); OMB Control Number 1024–0031]

Agency Information Collection Activities; Land and Water Conservation Fund State Assistance 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 with revisions.

DATES: Interested persons are invited to submit comments on or before July 15, 2019.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Phadrea Ponds, Acting Information Collection Clearance Officer, 1201 Oakridge Drive, Fort Collins, CO 80525; or by email at *phadrea_ponds@nps.gov;* or by telephone at 970–267–7231. Please reference OMB Control Number 1024–0031 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR by mail, contact Elisabeth Fondriest, Recreation Grants Chief, 1849 C Street NW (2225), Washington, DC 20240; or by email at *elisabeth_fondriest@nps.gov;* or by telephone at 202–354–6916. Please reference OMB Control Number 1024–0031 in the subject line of your comments.

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.

We are 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 Land and Water Conservation Fund Act of 1965 (LWCF Act) (54 U.S.C. 200305) was enacted to help preserve, develop, and ensure access for the public to outdoor recreation opportunities. The LWCF Act provides funds for and authorizes Federal assistance to the States for planning, acquisition, and development of needed land and water areas and facilities. In accordance with the LWCF Act, the National Park Service (we, NPS) administers the LWCF State Assistance Program, which provides matching grants to States and through the States to local units of government. As used in this information collection request, the term ''States'' includes the 50 States; the Commonwealths of Puerto Rico and the Northern Mariana Islands; the District of Columbia; and the Territories of Guam, the U.S. Virgin Islands, and American Samoa.

In accordance with the LWCF Act, we administer the LWCF State Assistance Program, which provides matching grants to States, and through the States to local units of government. LWCF grants are provided to States on a matching basis for up to 50 percent of the total project-related allowable costs. Grants to eligible insular areas may be for 100 percent assistance. The LWCF State Assistance Program gives maximum flexibility and responsibility to the States. States establish their own priorities and criteria and award their grant money through a competitive selection process based on a state-wide recreation plan. Payments for all projects are made to the State agency that is authorized to accept and administer funds paid for approved projects. Local units of government participate in the program as subgrantees of the State with the State retaining primary grant compliance responsibility.

The following information is collected to administer the LWCF State Assistance Program:

Application. States may seek financial assistance for acquisition, development, or planning projects to be conducted under the LWCF Act. To receive a grant, States must submit an application to NPS for review and approval. We use the information provided in applications to determine eligibility under the authorizing legislation and to select those projects that will provide the highest return on the Federal investment. Project proposals for LWCF grants comprise the following:

- *NPS Form 10–902 Project Agreement.* This form documents the agreement between the NPS and the State for accomplishing the project. It binds the Federal Government and the State to certain obligations through its acceptance of Federal assistance, including the rules and regulations applicable to the conduct of a project under the Act and any special terms and conditions to the project established by the NPS and agreed to by the State. It obligates the United States to provide grants up to a designated amount for eligible costs; sets forth methods of costing, accounting, incurrence of costs, and similar matters. The form also establishes the project performance period and briefly describes the scope of the project. (Note: we anticipate discontinuing use of this form.)
- *NPS Form 10–903 Description and Notification Form (DNF).* The State must submit a DNF for each park or other recreation area that will be assisted with grant funds. This form provides data about the assisted project site(s), such as location, acreages and details about improvements, as understood at the beginning of each grant project.
- *NPS Form 10–904 Proposal Description (PD) and Environmental Screening Form (ESF).* The PD assists the applicant in developing a narrative that provides administrative and

descriptive information to help the Federal decision-maker understand the nature of the proposed project. The ESF indicates the resources that could be impacted by the project, enabling States and/or local project sponsors to more accurately follow an appropriate pathway for compliance with the National Environmental Policy Act (NEPA). The analysis serves as part of the Federal administrative record required by NEPA and its implementing regulations. (Note: we anticipate revising this form to make a version specific for grant applications.)

• *Pre-award On-site Inspection Report.* The State must physically inspect proposed project sites prior to the award of grant funds and report on the findings. The inspection must be conducted in accord with the onsite inspection agreement between the State and NPS. See additional information under Reports, below.

• *Maps and other supporting documentation.* Applicants must develop and submit two maps: one depicting the general location of the park as well as the entrance area; the other delineating the specific boundary of the outdoor recreation area that will be protected for outdoor recreation purposes and subject to the conversion provisions at 54 U.S.C. 200305(f). Applicants should submit other documents that have a significant bearing on the project.

Grant Amendment. After initial award but during the award performance period, a State or project sponsor may seek to modify the agreed-upon terms, such as the award end date, the scope of work, or the budget. NPS must review and approve such changes. States must submit an amendment request on behalf of themselves or the local sponsor, which depending on the nature of the change, could comprise the following elements: NPS Form 10–902A, ''Amendment to Project Agreement:, revised Standard Forms, a letter from the State Liaison Officer (SLO) describing the proposed changes and the impact to the project, the PD/ESF, a revised boundary map, and a revised DNF.

• *NPS Form 10–902A Amendment to Project Agreement.* An amendment form is required to alter the signed Project Agreement for conversion requests. When the amendment is signed by the NPS, it becomes part of the agreement and supersedes it in the specified matters. (Note: we anticipate discontinuing use of this form for grant amendments.)

• *NPS Form 10–903 Description and Notification Form.* A revised DNF may be required for changes in scope that significantly alter the planned facility development or the acreage of the site or area to be protected under 6(f).

Conversion of Use. In accordance with 54 U.S.C. 200305(f) and implementing regulations found at 36 CFR 59, no lands acquired or developed with LWCF funds can be converted to other than public outdoor recreation uses without the approval of the Secretary of the Interior. States must submit a formal request to the appropriate NPS Regional Office with documentation to substantiate that: (a) All alternatives to the conversion have been evaluated and then rejected on a sound basis; (b) required replacement land being offered as a substitute is of reasonably equivalent location and recreational usefulness as the assisted site proposed for conversion; (c) the property proposed for substitution meets the eligibility requirements for LWCF assistance; and (d) replacement property is of at least equal fair market value as established by an appraisal developed in accordance with Federal appraisal standards. Required documentation is similar to that submitted for grant applications and amendment requests (Forms 10–902A, Amendment to Project Agreement; 10–903, DNF; and/or 10–904, PD/ESF). Additional documents include maps showing the existing protected recreation area and delineating the area to be converted and of the proposed replacement property. (Note: we anticipate continuing to use Form 10–902A for conversions and also revising Form 10–904 to create a version that would be used specifically for conversions and other post-grant amendments.)

Statewide Comprehensive Outdoor Recreation Plan (SCORP). The LWCF Act requires that to be eligible for LWCF financial assistance, each State must prepare and submit a SCORP to NPS for approval. The NPS requires a new or updated SCORP at least once every 5 years. The SCORP must include:

• The name of the State agency that will have the authority to represent and act for the State.

• An evaluation of the demand for and supply of outdoor recreation resources and facilities in the State.

• A program for the implementation of the plan.

• Certification by the Governor that ample opportunity for public participation has taken place in plan development.

Open Project Selection Process (OPSP). Each State must develop an OPSP that provides objective criteria and standards for grant selection that are explicitly based on each State's priority needs for the acquisition and development of outdoor recreation resources as identified in the SCORP. The OPSP is the connection between the SCORP and the use of LWCF grants to assist State efforts in meeting high priority outdoor recreation resource needs. To ensure continuing close ties between the SCORP and the OPSP, States must review project selection criteria each time that a new or amended SCORP is approved by the NPS. States must submit to the NPS a revised set of OPSP criteria that conform to any changes in SCORP priorities or submit an appropriate certification that no such revisions are necessary.

Proposal for a Public Facility. Except for certain kinds of supporting facilities (*e.g.,* restrooms, visitor information centers), project sponsors must seek NPS approval when constructing an indoor structure on a property that has received LWCF assistance. In most cases, development of an indoor structure would constitute a conversion, but, in certain cases NPS may approve them where it can be shown that they will enhance the outdoor recreation uses of a park and there will be a net gain in benefits to the outdoor recreating public using that park. The request comprises the PD/ESF, which is used to describe the nature of the facility, how it will support and enhance the outdoor recreation use of the site, and ownership and management; as well as a copy of a revised boundary map indicating the location of the proposed facility.

Request for Temporary Non-Conforming Use. Project sponsors must seek NPS approval for the temporary (up to 6 months) use of an LWCF-assisted site for purposes that do not conform to the public outdoor recreation requirements. The State's proposal to NPS must include: (a) Form 10–904, PD/ESF (used to describe the proposed temporary use); (b) SLO recommendations; and (c) an acknowledgement by the SLO that a full conversion will result if the temporary use has not ceased after 6 months.

Request for Significant Change of Use. Project sponsors must seek NPS approval to change the use of an assisted site from one eligible use to another when the proposed use significantly contravenes the plans or intent for the area as they were outlined in the original LWCF application for Federal assistance; *e.g.,* changing a site's use from passive to active recreation. NPS Form 10–904, PD/ESF is used for this request.

Extension of the 3-year Limit for Delayed Outdoor Recreation Development. Project sponsors must seek NPS approval to continue a non-recreation use beyond the 3-year limit

for acquisition projects that were previously approved with delayed outdoor recreation development. The State must submit a written request and justification for such an extension to NPS before the end of the initial 3-year period. This request must include: (a) A full description of the property's current public outdoor recreation resources and the public's current ability to use the property; and (b) an update of the project sponsor's plans and schedule for developing outdoor recreation facilities on the property.

Reports. We use this information provided in reports to ensure that the grantee is accomplishing the work on schedule and to identify any problems that the grantee may be experiencing in accomplishing that work.

• *Onsite Inspection Reports.* States must administer a regular and continuing program of onsite inspections of projects. Onsite inspection reports are prepared for all inspections conducted and are included in the official project files maintained by the State. Progress onsite inspection reports occur during the grant project period and are generally combined with the annual performance report or when grant payments are made. Final onsite inspection reports must be submitted to the NPS within 90 days after the date of completing a project and prior to final reimbursement and administrative closeout. Post-completion onsite inspection reports must be completed within 5 years after the final project reimbursement and every 5 years thereafter. If there are problems, the report should include a description of the discrepancy and the corrective action to be taken. Only reports indicating problems are forwarded to the NPS for review and necessary action; all other reports are maintained in State files.

• *Financial and Program Performance Reports.* In accordance with 2 CFR 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards), grantees must monitor grant and subgrant supported activities to ensure compliance with applicable Federal requirements and that performance goals are being achieved. States must submit reports to NPS at least annually that include performance and financial information.

Recordkeeping. To comply with the grant requirements of 2 CFR 200, States must maintain financial records, supporting documents, statistical records, and all other records pertinent to a grant program for a period of 3 years after final payment on a project. The records must be retained beyond the 3-year period if audit findings have not been resolved. However, to comply with the LWCF Act perpetuity requirements, States must maintain sufficient records to allow them to keep track of parks and other recreation areas that have been assisted.

Request for Reimbursement/Record of Electronic Payment. States use the Automated Standard Application for Payments (ASAP) system for drawing funds on approved grants. For planning grants, States must submit to NPS a progress report and request for reimbursement before they may request payments. Acquisition and development projects do not require prior approval, but upon completion of an electronic payment on a given date the State must concurrently (within 24 hours) submit a completed NPS Form 10–905, ''Record of Electronic Payment'' to the LWCF Program offices in Washington, DC and applicable NPS Region.

Proposal to Shelter Facilities. Project sponsors must seek NPS approval to construct new or partially or fully enclose an existing outdoor recreation facility, such as a pool or ice rink, to shelter them from cold climatic conditions and thereby increase the recreational opportunities. This approval is required whether seeking to use LWCF grant funds for this purpose or not. NPS Form 10–904, PD/ESF is used for this request.

Title of Collection: Land and Water Conservation Fund State Assistance Program, 54 U.S.C. 200305.

OMB Control Number: 1024–0031.

Form Number: NPS Forms 10–902, 10–902A, 10–903, 10–904, and 10–905.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: States Governments; the Commonwealths of Puerto Rico and the Northern Mariana Islands; the District of Columbia; and the territories of Guam, U.S. Virgin Islands, and American Samoa.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

Activity	Estimated annual respondents	Estimated annual responses	Average completion time per response (hours)	Estimated annual burden hours *
Application (NPS Forms 10–902, 10–903, and 10–904):				
State/Local/Tribal Governments	60	300	12	3,600
Grant Amendment (NPS Forms 10–902A and 10–903):				
State/Local/Tribal Governments	50	180	5	900
Conversion of Use (NPS Forms 10–902, 10–903, and 10–904):				
State/Local/Tribal Governments	50	50	92.5	4,625
Statewide Comprehensive Outdoor Recreation Plan (SCORP):				
State/Local/Tribal Governments	11	11	600	6,600
Open Project Selection Process:				
State/Local/Tribal Governments	11	11	30	330
Proposal for Public Facility:				
State/Local/Tribal Governments	8	8	16	128

Activity	Estimated annual respondents	Estimated annual responses	Average completion time per response (hours)	Estimated annual burden hours *
Request for Temporary Non-Conforming Use (NPS Form 10–904):				
State/Local/Tribal Governments	5	5	16	80
Request for Significant Change of Use (NPS Form 10–904):				
State/Local/Tribal Governments	2	2	16	32
Extension of 3-Year Limit for Delayed Outdoor Recreation Development:				
State/Local/Tribal Governments	5	5	16	80
Onsite Inspection Reports:				
State/Local/Tribal Governments	56	4,368	5.75	25,116
Financial and Program Performance Reports:				
State/Local/Tribal Governments	56	661	1	661
Recordkeeping:				
State/Local/Tribal Governments	56	56	40	2,240
Request for Reimbursement/Record of Electronic Payment (NPS Form 10–905):				
State/Local/Tribal Governments	56	336	1	336
Proposal to Shelter Facilities:				
State/Local/Tribal Governments	1	1	16	16
Totals:	427	5,994		44,744

* Rounded.

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. 2019–09904 Filed 5–13–19; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–747 (Fourth Review)]

Fresh Tomatoes From Mexico; Termination of Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission instituted the subject five-year review on February 1, 2018, to determine whether termination of the suspended investigation on fresh tomatoes from Mexico would be likely to lead to continuation or recurrence of material injury to a domestic industry. On February 6, 2019, the Department of Commerce (''Commerce'') gave notice of its intent to withdraw from and terminate the 2013 Suspension Agreement on Fresh Tomatoes from Mexico and resume the underlying antidumping duty investigation (March 5, 2019). Effective May 7, 2019, Commerce withdrew from and terminated the suspension agreement and resumed the underlying antidumping duty investigation. Accordingly, since there is no longer a suspension agreement of which to conduct a five-year review, the U.S. International Trade Commission gives notice of the termination of its review involving fresh tomatoes from Mexico.

DATES: May 7, 2019.

FOR FURTHER INFORMATION CONTACT: Christopher W. Robinson (202–205–2542), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Authority: This review is being terminated under authority of title VII of the Tariff Act of 1930 and pursuant to section 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)). This notice is published pursuant to section 201.10 of the Commission's rules (19 CFR 201.10).

By order of the Commission.

Issued: May 8, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–09848 Filed 5–13–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–624–625 and 731–TA–1450–1451 (Preliminary)]

Quartz Surface Products From India and Turkey; Institution of Anti-Dumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of Investigations and commencement of preliminary phase antidumping and countervailing duty investigation Nos. 701–TA–624–625 and 731–TA–1450–1451 (Preliminary) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of quartz surface products from India and Turkey, provided for in subheading 6810.99.00 (statistical reporting number 6810.99.0010) of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Governments of India and Turkey. Unless the Department of Commerce (''Commerce'') extends the time for initiation, the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by June 24, 2019. The Commission's views must be transmitted to Commerce within five business days thereafter, or by July 1, 2019.

DATES: May 8, 2019.

FOR FURTHER INFORMATION CONTACT: Julie Duffy ((202) 708–2579), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), in response to a petition filed on May 8, 2019, by Cambria Company LLC, Eden Prairie, Minnesota.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigations and public service list.—Persons (other than petitioner) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Investigations has scheduled a conference in connection with these investigations for 9:30 a.m. on Wednesday, May 29, 2019, at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. Requests to appear at the conference should be emailed to *preliminaryconferences@usitc.gov* (DO NOT FILE ON EDIS) on or before May 24, 2019. Parties in support of the imposition of countervailing and antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before June 3, 2019, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's website at *https://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these investigations must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that any information that it submits to the Commission during these investigations may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of these or related investigations or reviews, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: May 8, 2019.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2019–09934 Filed 5–13–19; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

On April 25, 2019, the Department of Justice lodged a proposed Consent Decree (''Consent Decree'') in the United States District Court for the Southern District of Mississippi, in the lawsuit entitled the *United States of America and State of Mississippi* v. *Denbury Onshore, LLC* Civil Action No. 3:19–CV–289–HTW–LRA.

This Decree represents a settlement of the United States' and State's (''Plaintiffs'') claims against Denbury Onshore, LLC. (''Defendant'') for violations of the Clean Water Act and various State laws. Under the Consent Decree, the Defendant will be required to undertake an extensive program designed to eliminate the discharges of oil from the Defendant's oil fields located in Mississippi. The Consent Decree further requires the Defendant to pay a civil penalty of $3.5 million, with $2.4 million being paid to the Oil Spill Liability Trust Fund, and $1.1 million being paid to the State of Mississippi.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States of America and State of Mississippi* v. *Denbury Onshore, LLC.,* the D.J. Ref. No. 90–5–1–1–10733. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Amended Consent Decree may be examined and downloaded at this Justice Department website: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Amended Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $12.75 (25 cents per page reproduction cost) payable to the United States Treasury for the Consent Decree and $21.25 for the Consent Decree and Exhibits thereto.

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2019–09879 Filed 5–13–19; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0341]

Agency Information Collection Activities; Proposed eCollection eComments Requested: Revision of a Currently Approved Collection; Office for Victims of Crime Training and Technical Assistance Center (OVC TTAC) Feedback Form Package

AGENCY: Office of Justice Programs, Office for Victims of Crime, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice, Office of Justice Programs, Office for Victims of Crime 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 is published to obtain comments from the public and affected agencies.

DATES: The purpose of this notice is to allow for an additional 60 days for public comment until July 15, 2019.

FOR FURTHER INFORMATION CONTACT: If you have 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 Shelby Jones Crawford, Program Manager, Office for Victims of Crime, Office of Justice Programs, Department of Justice, 810 7th Street NW, Washington, DC 20530. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Officer of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503 (202) 532–3611 or send to *OIRA_submissions@omb.eop.gov.*

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 [Component or Office name], 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:* Revision of Existing Collection.

2. *The Title of the Form/Collection:* OVC TTAC Feedback Form Package.

3. *The agency form number:* N/A. Office for Victims of Crime, Office of Justice Programs, Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local, or Tribal agencies/organizations. Other: Federal Government; Individuals or households; Not-for-profit institutions; Businesses or other for-profit. Abstract: The Office for Victims of Crime Training and Technical Assistance Center (OVC TTAC) Feedback Form Package is designed to collect the data necessary to continuously assess the satisfaction and outcomes of assistance provided through OVC TTAC for both monitoring and accountability purposes to continuously meet the needs of the victim services field. OVC TTAC will give these forms to recipients of training and technical assistance, scholarship

applicants, users of the website and call center, consultants/instructors providing training, agencies requesting services, and other professionals receiving assistance from OVC TTAC. The purpose of this data collection will be to capture important feedback on the respondents' satisfaction and outcomes of the resources provided. The data will then be used to advise OVC on ways to improve the support that it provides to the victim services field at-large.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are approximately 25,425 respondents who will require an average of 10 minutes (ranging from 5 to 15 minutes across all forms) to respond to a single form each year.

6. *An estimate of the total public burden (in hours) associated with the collection:* The total annual public burden hours for this information collection are estimated to be 4,609 hours (1,152 hours per year).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: May 9, 2019.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2019–09873 Filed 5–13–19; 8:45 am]

BILLING CODE 4410–18–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2019–3]

Public Draft of the Compendium of U.S. Copyright Office Practices

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Extension of comment period.

SUMMARY: The U.S. Copyright Office is extending the deadline for the submission of written comments in response to its March 15, 2019, notice announcing the release of a public draft of an update to its administrative manual, the *Compendium of U.S. Copyright Office Practices, Third Edition.*

DATES: The comment period for the notice, published on March 15, 2019, is extended by an additional seventeen days until the end of the month. Comments must be made in writing and must be received in the U.S. Copyright Office no later than 11:59 p.m. Eastern Time on May 31, 2019.

ADDRESSES: The public draft of the update to the *Compendium of U.S. Copyright Office Practices, Third Edition* is available on the Office's website at *https://www.copyright.gov/comp3/draft.html.* For reasons of government efficiency, the Copyright Office is using the *regulations.gov* system for the submission and posting of public comments related to this draft. All comments are therefore to be submitted electronically through *regulations.gov.* Specific instructions for submitting comments are available on the Copyright Office website at *https://www.copyright.gov/comp3/draft/comment-submission.* If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Office using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Jalyce Mangum, Attorney-Advisor, by email at *jmang@copyright.gov,* or by telephone at 202–707–8350.

SUPPLEMENTARY INFORMATION: On March 15, 2019, the U.S. Copyright Office issued a notice announcing the release of a public draft of an update to its administrative manual, the *Compendium of U.S. Copyright Office Practices, Third Edition.*[1] The Office updated the manual to reflect the Supreme Court's decision in *Star Athletica* v. *Varsity Brands,* 137 S. Ct. 1002 (2017), rulemakings issued over the past two years, and technical upgrades that have been made to the electronic registration system. The update was released in draft form to give the public an opportunity to review and provide comments on the revisions. To ensure that members of the public have sufficient time to respond, and to ensure that the Office has the benefit of a complete record, the Office is extending the submission deadline until the end of the month. Written comments now are due no later than May 31, 2019.

Dated: May 9, 2019.

Regan A. Smith,

General Counsel and Associate Register of Copyrights.

[FR Doc. 2019–09895 Filed 5–13–19; 8:45 am]

BILLING CODE 1410–30–P

[1] 84 FR 9562 (Mar. 15, 2019).

OFFICE OF MANAGEMENT AND BUDGET

Agency Information Collection Activities: Proposed Collection Revision; Comment Request; Information on Meetings With Outside Parties Pursuant to Executive Order 12866

AGENCY: Office of Management and Budget.

ACTION: Notice and request for comments.

SUMMARY: The Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) is proposing to revise the information collection 0348–0065 it uses to for members of the public who request a meeting with OIRA on rules under review at the time pursuant to Executive Order 12866. The information collected would be subject to the Paperwork Reduction Act (PRA) and this notice announces and requests comment on OIRA's proposal for such a collection.

DATES: Consideration will be given to all comments received by June 13, 2019.

ADDRESSES: Submit comments by one of the following methods:

- *Email: Oira_submission@omb.eop.gov.* Please include in the subject line of the email, ''Executive Order 12866 Information Collection.''
- *Fax:* 202–395–5806.

Comments submitted in response to this notice may be made available to the public. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: *Oira_submission@omb.eop.gov,* Lisa Jones, 202–395–5897.

SUPPLEMENTARY INFORMATION:

Title: Information on Meetings with Outside Parties Pursuant to Executive Order 12866.

Abstract: Executive Order 12866, ''Regulatory Planning and Review,'' issued by President Clinton on September 30, 1993, establishes and

governs the process under which OIRA reviews agency draft proposed and final regulatory actions. Consistent with the disclosure provisions of Executive Order 12866, OIRA provides information about its work related to regulatory reviews on *Reginfo.gov* at *www.Reginfo.gov* and on OIRA's website at *https://www.whitehouse.gov/omb/oira.* Executive Order 12866 establishes a disclosure process regarding the OIRA Administrator's (or his/her designee's) meetings with outside parties during formal review of a regulatory action. OIRA discloses the subject, date, and participants of the meeting on the *Reginfo.gov* website, as well as any materials provided to OIRA at such meetings.

These meetings occur at the initiative and request of outside parties. Any member of the public may request a meeting about a regulatory action under OIRA review to present views and may invite other outside parties to attend. OIRA invites representatives from the agency or agencies that would issue the regulatory action. OIRA does not take minutes during the meeting but does, however, post on *RegInfo.gov* any written materials provided by outside parties during these meetings, including the initial meeting request.

To help ensure transparency associated with meetings pursuant to Executive Order 12866, OIRA is proposing to collect—and then post publicly—the following information from outside parties that request a meeting with OIRA to present their views on a regulatory action currently under review:

1. Names of all attendees who will be present at the meeting from the outside party or parties. Each attendee's organization or affiliation. If an attendee is representing another organization, please provide the name of the organization the attendee is representing.

2. The name of the regulatory action under review on which the party would like to present its views.

3. Electronic copies of all of briefing materials that will be used during the presentation.

4. An acknowledgment by the requesting party that all information submitted to OIRA pursuant to this collection and meeting request will be made publically available at *Reginfo.gov.*

Additionally the contact information (phone number and email) for the requesting organization will also be collected in order to confirm the meeting with them, but will not be posted. This revision includes allowing outside parties to provide the information to OIRA through an electronic online form.

This revision to the information collection will streamline the current process for outside parties when requesting a meeting and will ensure transparency and accuracy of the docket that OIRA keeps in accordance with the disclosure provisions of Executive Order 12866. OIRA welcomes any and all public comments on the proposed collection of information such as the accuracy of OIRA's burden estimate, the practical utility of collecting this information, and whether there are additional pieces of information that could be collected from meeting requestors to further the disclosure provisions of Executive Order 12866.

Current actions: Proposal for revising an existing information collection requirement.

Type of review: Revision.

Affected public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Governments.

Expected average annual number of respondents: 200.

Average annual number of responses per respondent: 2.

Total number of responses annually: 400.

Burden per response: 30 minutes.

Total average annual burden: 200 hours.

Request for comments: OMB anticipates that comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

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.

Dominic J. Mancini,

Deputy Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 2019–09912 Filed 5–13–19; 8:45 am]

BILLING CODE 3110–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of May 13, 20, 27, June 3, 10, 17, 2019.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of May 13, 2019

Tuesday, May 14, 2019

9:00 a.m. Briefing on Digital Instrumentation and Control (Public Meeting) (Contact: Jason Paige: 301–415–1474).

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Thursday, May 16, 2019

10:00 a.m. Briefing on Security Issues (Closed Ex. 1).

2:00 p.m. Briefing on Security Issues (Closed Ex. 1).

Week of May 20, 2019—Tentative

There are no meetings scheduled for the week of May 20, 2019.

Week of May 27, 2019—Tentative

Thursday, May 30, 2019

9:00 a.m. Briefing on Nuclear Regulatory Research Program (Public Meeting) (Contact: Nicholas DiFrancesco: 301–415–1115).

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of June 3, 2019—Tentative

There are no meetings scheduled for the week of June 3, 2019.

Week of June 10, 2019—Tentative

There are no meetings scheduled for the week of June 10, 2019.

Week of June 17, 2019—Tentative

Tuesday, June 18, 2019

10:00 a.m. Briefing on Human Capital and Equal Employment Opportunity (Public Meeting) (Contact: Jason Lising: 301–287–0569).

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.* The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Kimberly Meyer-Chambers, NRC Disability Program Manager, at 301–287–0739, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or by email at *Wendy.Moore@nrc.gov.*

Dated at Rockville, Maryland, this 10th day of May, 2019.

For the Nuclear Regulatory Commission.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2019–10094 Filed 5–10–19; 4:15 pm]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Notice—June 5, 2019 Public Hearing

TIME AND DATE: 1:00 p.m., Wednesday, June 5, 2019.

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue NW, Washington, DC.

STATUS: Hearing OPEN to the Public at 1:00 p.m.

MATTERS TO BE CONSIDERED: This will be a Public Hearing, held in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 p.m. Tuesday, May 28, 2019. The notice must include the individual's name, title, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 p.m. Tuesday, May 28, 2019. Such statement must be typewritten, double spaced, and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda, which will be available at the hearing, that identifies speakers, the subject on which each participant will speak, and the time allotted for each presentation.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

Written summaries of the projects to be presented at the June 12, 2019, Board meeting will be posted on OPIC's website.

CONTACT PERSON FOR INFORMATION: Information on the hearing may be obtained from Catherine F.I. Andrade at (202) 336–8768, via facsimile at (202) 408–0297, or via email at *Catherine.Andrade@opic.gov.*

Dated: May 10, 2019.

Catherine F.I. Andrade,

OPIC Corporate Secretary.

[FR Doc. 2019–10000 Filed 5–10–19; 11:15 am]

BILLING CODE 3210–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33470; 812–14975]

Ellington Income Opportunities Fund, et al.

May 8, 2019.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 18(a)(2), 18(c) and 18(i) of the Act, under sections 6(c) and 23(c)(3) of the Act for an exemption from rule 23c–3 under the Act, and for an order pursuant to section 17(d) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end management investment companies to issue multiple classes of shares and to impose asset-based distribution and/or service fees, early withdrawal charges (''EWCs''), and early repurchase fees. The order would supersede the prior order.[1]

APPLICANTS: Ellington Income Opportunities Fund (the ''Ellington Fund''), Princeton Private Investments Access Fund (the ''Princeton Fund,'' and together with the Ellington Fund, the ''Initial Funds''), Princeton Fund Advisors, LLC (the ''Investment Adviser''), and Ellington Global Asset Management, LLC (the ''Sub-Adviser,'' and together with the Investment Adviser, the ''Investment Advisers'').

FILING DATES: The application was filed on November 13, 2018 and amended on April 16, 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 June 3, 2019, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues

[1] Princeton Private Equity Fund and Princeton Fund Advisors, LLC, Investment Co. Act Rel. 31512 (March 25, 2015) (Notice) and 31562 (April 22, 2015) (Order) (the ''PPIAF Order'').

contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090; Applicants: Ellington Income Opportunities Fund and Princeton Private Investments Access Fund, c/o Princeton Fund Advisors, LLC, 8000 Norman Center Drive, Suite 630, Minneapolis, Minnesota 55437, Princeton Fund Advisors, LLC, 8000 Norman Center Drive, Suite 630, Minneapolis, Minnesota 55437, and Ellington Global Asset Management, LLC, 53 Forest Avenue, Suite 301, Old Greenwich, Connecticut 06870.

FOR FURTHER INFORMATION CONTACT: Hae-Sung Lee, Senior Counsel, at (202) 551–7345, or Trace W. Rakestraw, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Ellington Fund is a newly-formed Delaware statutory trust that is registered under the Act as a continuously offered, non-diversified, closed-end management investment company.

2. The Princeton Fund is a Delaware business trust that is registered under the Act as a closed-end, non diversified, management investment company.

3. The Investment Adviser, a Delaware limited liability company, is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). The Investment Adviser serves as investment adviser to the Initial Funds.

4. The Sub-Adviser, a Delaware limited liability company, is registered as an investment adviser under the Advisers Act. The Sub-Advisor serves as the investment sub-adviser to the Ellington Fund.

5. The applicants seek an order to permit the Funds (as defined below) to issue multiple classes of shares of beneficial interest, each having its own fee and expense structure and to impose EWCs, asset-based distribution and/or service fees with respect to certain classes.

6. Applicants request that the order also apply to any continuously-offered registered closed-end management investment company, existing now or in the future, for which the Investment Adviser, or any entity controlling, controlled by, or under common control with the Investment Adviser, or any successor in interest to any such entity,[2] acts as investment adviser and which operates as an interval fund pursuant to rule 23c–3 under the Act or provides periodic liquidity with respect to its shares pursuant to rule 13e–4 under the Securities Exchange Act of 1934 (''Exchange Act'') (each, a ''Future Fund'' and together with the Initial Funds, the ''Funds'').[3]

7. Ellington Fund's Class M shares are currently being offered in private transactions on a continuous basis at net asset value per Share. The Ellington Fund reserves the right to conduct a public offering of shares under the Securities Act of 1933, as amended (''Securities Act''). Applicants state that additional offerings by any Fund relying on the order may be on a private placement or public offering basis. Shares of the Funds are not expected to be listed on any securities exchange, nor quoted on any quotation medium and the Funds do not expect there to be a secondary trading market for their shares.

8. If the requested relief is granted, the Ellington Fund may continuously offer Class A shares, Class C shares, Class I shares, and Class M shares, with each class having its own fee and expense structure. Class M Shares of the Ellington Fund are not subject to a front-end sales charge. Class M shares will not be subject to an EWC. The Funds may in the future offer additional classes of shares and/or another sales charge structure.

9. The Princeton Fund's shares are currently offered in private transactions on a continuous basis at their net asset value per share, plus if applicable, any upfront sales load. The Princeton Fund's shares are only offered to individuals or entities that are ''accredited investors'' within the meaning of Regulation D of the Securities Act. The Princeton Fund currently relies on the PPIAF Order to offer multiple classes of shares, and each class has its own fee and expense structure. The Princeton Fund offers seven classes of shares designated as ''Class A'', ''Class I'', ''Class AA'', ''Class II'', ''Class C'', ''Class T'' and ''Class L''.

10. Applicants state that, from time to time, the Initial Funds may create additional classes of shares, the terms of which may differ from Class A, Class AA, Class C, Class I, Class II, Class T, Class L, and Class M shares in the following respects: (i) The amount of fees permitted by different distribution plans or different service fee arrangements; (ii) voting rights with respect to a distribution or service plan of a class; (iii) different class designations; (iv) the impact of any class expenses directly attributable to a particular class of shares allocated on a class basis as described in the application; (v) any differences in dividends and net asset value resulting from differences in fees under a distribution plan or in class expenses; (vi) any EWC or other sales load structure; and (vii) exchange or conversion privileges of the classes as permitted under the Act.

11. Applicants state that the Ellington Fund has adopted a fundamental policy to repurchase a specified percentage of its shares (no less than 5% and no more than 25%) at net asset value on a quarterly basis, and each repurchase pricing shall occur no later than the 14th day after the repurchase request deadline, or the next business day if the 14th is not a business day. Such repurchase offers will be conducted pursuant to rule 23c–3 under the Act. The Princeton Fund provides periodic liquidity with respect to its shares pursuant to rule 13e–4 under the Exchange Act. Each of the other Funds will likewise adopt fundamental investment policies and make quarterly repurchase offers to its shareholders in compliance with rule 23c–3 or will provide periodic liquidity with respect to its shares pursuant to rule 13e–4 under the Exchange Act.[4] Any repurchase offers made by the Funds will be made to all holders of shares of each such Fund as of the selected record date.

12. Applicants represent that any asset-based service and/or distribution fees for each class of shares of the Funds will comply with the provisions of FINRA Rule 2341 (''FINRA Sales Charge Rule'').[5] Applicants also represent that each Fund will disclose in its

[2] A successor in interest is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

[3] Any Fund relying on this relief in the future will do so in a manner consistent with the terms and conditions of the application. Applicants represent that each entity presently intending to rely on the requested relief is listed as an applicant.

[4] Applicants submit that rule 23c–3 and Regulation M under the Exchange Act permit an interval fund to make repurchase offers to repurchase its shares while engaging in a continuous offering of its shares pursuant to Rule 415 under the Securities Act.

[5] Any reference in the application to the FINRA Sales Charge Rule includes any successor or replacement to the FINRA Sales Charge Rule.

prospectus the fees, expenses and other characteristics of each class of shares offered for sale by the prospectus, as is required for open-end multiple class funds under Form N–1A.[6] As is required for open-end funds, each Fund will disclose its expenses in shareholder reports, and describe any arrangements that result in breakpoints in, or elimination of, sales loads in its prospectus.[7] In addition, applicants will comply with applicable enhanced fee disclosure requirements for fund of funds, including registered funds of hedge funds.[8]

13. Each of the Funds will comply with any requirements that the Commission or FINRA may adopt regarding disclosure at the point of sale and in transaction confirmations about the costs and conflicts of interest arising out of the distribution of open-end investment company shares, and regarding prospectus disclosure of sales loads and revenue sharing arrangements, as if those requirements applied to the Fund. In addition, each Fund will contractually require that any distributor of the Fund's shares comply with such requirements in connection with the distribution of such Fund's shares.

14. Each Fund will allocate all expenses incurred by it among the various classes of shares based on the net assets of the Fund attributable to each class, except that the net asset value and expenses of each class will reflect the expenses associated with the distribution and/or service plan of that class, service fees, and any other incremental expenses of that class. Expenses of a Fund allocated to a particular class of shares will be borne on a pro rata basis by each outstanding share of that class. Applicants state that each Fund will comply with the provisions of rule 18f–3 under the Act as if it were an open-end investment company.

15. Applicants state that each Fund may impose an EWC on shares submitted for repurchase that have been held less than a specified period and may waive the EWC for certain categories of shareholders or transactions to be established from time to time. Applicants state that each Fund will apply the EWC (and any waivers or scheduled variations of the EWC) uniformly to all shareholders in a given class and consistently with the requirements of rule 22d–1 under the Act as if the Funds were open-end investment companies.

16. Applicants state that shares of a Fund may be subject to an early repurchase fee (''Early Repurchase Fee'') at a rate of no greater than 2% of the aggregate net asset value of a shareholder's shares repurchased by the Fund if the interval between the date of purchase of the shares and the valuation date with respect to the repurchase of those shares is less than one year. Any Early Repurchase Fees will apply equally to all classes of shares of a Fund, consistent with section 18 of the Act and rule 18f–3 thereunder. To the extent a Fund determines to waive, impose scheduled variations of, or eliminate any Early Repurchase Fee, it will do so consistently with the requirements of rule 22d–1 under the Act as if the Early Repurchase Fee were a contingent deferred sales load (''CDSL'') and as if the Fund were an open-end investment company and the Fund's waiver of, scheduled variation in, or elimination of, any such Early Repurchase Fee will apply uniformly to all shareholders of the Fund regardless of class. Applicants state that the Princeton Fund is the only Initial Fund that charges an Early Repurchase Fee.

17. Each Fund operating as an interval fund pursuant to rule 23c–3 under the Act may offer its shareholders an exchange feature under which the shareholders of the Fund may, in connection with the Fund's periodic repurchase offers, exchange their shares of the Fund for shares of the same class of (i) registered open-end investment companies or (ii) other registered closed-end investment companies that comply with rule 23c–3 under the Act and continuously offer their shares at net asset value, that are in the Fund's group of investment companies (collectively, ''Other Funds''). Shares of a Fund operating pursuant to rule 23c–3 that are exchanged for shares of Other Funds will be included as part of the amount of the repurchase offer amount for such Fund as specified in rule 23c–3 under the Act. Any exchange option will comply with rule 11a–3 under the Act, as if the Fund were an open-end investment company subject to rule 11a–3. In complying with rule 11a–3, each Fund will treat an EWC as if it were a CDSL.

Applicants' Legal Analysis

Multiple Classes of Shares

1. Section 18(a)(2) of the Act provides that a closed-end investment company may not issue or sell a senior security that is a stock unless certain requirements are met. Applicants state that the creation of multiple classes of shares of the Funds may violate section 18(a)(2) because the Funds may not meet such requirements with respect to a class of shares that may be a senior security.

2. Section 18(c) of the Act provides, in relevant part, that a closed-end investment company may not issue or sell any senior security if, immediately thereafter, the company has outstanding more than one class of senior security. Applicants state that the creation of multiple classes of shares of the Funds may be prohibited by section 18(c), as a class may have priority over another class as to payment of dividends because shareholders of different classes would pay different fees and expenses.

3. Section 18(i) of the Act provides that each share of stock issued by a registered management investment company will be a voting stock and have equal voting rights with every other outstanding voting stock. Applicants state that multiple classes of shares of the Funds may violate section 18(i) of the Act because each class would be entitled to exclusive voting rights with respect to matters solely related to that class.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction or any class or classes of persons, securities or transactions from any provision of the Act, or from any rule or regulation under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under section 6(c) from sections 18(a)(2), 18(c) and 18(i) to permit the Funds to issue multiple classes of shares.

5. Applicants submit that the proposed allocation of expenses relating to distribution and/or services and voting rights among multiple classes is equitable and will not discriminate against any group or class of shareholders. Applicants submit that the proposed arrangements would permit a Fund to facilitate the distribution of its shares and provide investors with a broader choice of

[6] In all respects other than class by class disclosure, each Fund will comply with the requirements of Form N–2.

[7] *See* Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment Companies, Investment Company Act Release No. 26372 (Feb. 27, 2004) (adopting release) (requiring open-end investment companies to disclose fund expenses in shareholder reports); and Disclosure of Breakpoint Discounts by Mutual Funds, Investment Company Act Release No. 26464 (June 7, 2004) (adopting release) (requiring open-end investment companies to provide prospectus disclosure of certain sales load information).

[8] Fund of Funds Investments, Investment Company Act Rel. Nos. 26198 (Oct. 1, 2003) (proposing release) and 27399 (Jun. 20, 2006) (adopting release). *See also* Rules 12d1–1, *et seq.* of the Act.

shareholder services. Applicants assert that the proposed closed-end investment company multiple class structure does not raise the concerns underlying section 18 of the Act to any greater degree than open-end investment companies' multiple class structures that are permitted by rule 18f–3 under the Act. Applicants state that each Fund will comply with the provisions of rule 18f–3 as if it were an open-end investment company.

Early Withdrawal Charges

1. Section 23(c) of the Act provides, in relevant part, that no registered closed-end investment company shall purchase securities of which it is the issuer, except: (a) On a securities exchange or other open market; (b) pursuant to tenders, after reasonable opportunity to submit tenders given to all holders of securities of the class to be purchased; or (c) under other circumstances as the Commission may permit by rules and regulations or orders for the protection of investors.

2. Rule 23c–3 under the Act permits a registered closed-end investment company (an ''interval fund'') to make repurchase offers of between five and twenty-five percent of its outstanding shares at net asset value at periodic intervals pursuant to a fundamental policy of the interval fund. Rule 23c–3(b)(1) under the Act permits an interval fund to deduct from repurchase proceeds only a repurchase fee, not to exceed two percent of the proceeds, that is paid to the interval fund and is reasonably intended to compensate the fund for expenses directly related to the repurchase.

3. Section 23(c)(3) provides that the Commission may issue an order that would permit a closed-end investment company to repurchase its shares in circumstances in which the repurchase is made in a manner or on a basis that does not unfairly discriminate against any holders of the class or classes of securities to be purchased.

4. Applicants request relief under section 6(c), discussed above, and section 23(c)(3) from rule 23c–3 to the extent necessary for the Funds to impose an EWC on shares of the Funds submitted for repurchase that have been held for less than a specified period.

5. Applicants state that the EWCs they intend to impose are functionally similar to CDSLs imposed by open-end investment companies under rule 6c–10 under the Act. Rule 6c–10 permits open-end investment companies to impose CDSLs, subject to certain conditions. Applicants note that rule 6c–10 is grounded in policy considerations supporting the employment of CDSLs where there are adequate safeguards for the investor and state that the same policy considerations support imposition of EWCs in the interval fund context. In addition, applicants state that EWCs may be necessary for the distributor to recover distribution costs. Applicants represent that any EWC imposed by the Funds will comply with rule 6c–10 under the Act as if the rule were applicable to closed-end investment companies. The Funds will disclose EWCs in accordance with the requirements of Form N–1A concerning CDSLs.

Asset-Based Distribution and/or Service Fees

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the Commission issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d–1, the Commission considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

2. Rule 17d–3 under the Act provides an exemption from section 17(d) and rule 17d–1 to permit open-end investment companies to enter into distribution arrangements pursuant to rule 12b–1 under the Act. Applicants request an order under section 17(d) and rule 17d–1 under the Act to the extent necessary to permit the Fund to impose asset-based distribution and/or service fees. Applicants have agreed to comply with rules 12b–1 and 17d–3 as if those rules applied to closed-end investment companies, which they believe will resolve any concerns that might arise in connection with a Fund financing the distribution of its shares through asset-based distribution and/or service fees.

For the reasons stated above, applicants submit that the exemptions requested under section 6(c) are necessary and appropriate in the public interest and are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants further submit that the relief requested pursuant to section 23(c)(3) will be consistent with the protection of investors and will insure that applicants do not unfairly discriminate against any holders of the class of securities to be purchased. Finally, applicants state that the Funds' imposition of asset-based distribution and/or service fees is consistent with the provisions, policies and purposes of the Act and does not involve participation on a basis different from or less advantageous than that of other participants.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Each Fund relying on the order will comply with the provisions of rules 6c–10, 12b–1, 17d–3, 18f–3, 22d–1, and, where applicable, 11a–3 under the Act, as amended from time to time, as if those rules applied to closed-end management investment companies, and will comply with the FINRA Sales Charge Rule, as amended from time to time, as if that rule applied to all closed-end management investment companies.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–09843 Filed 5–13–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85807; File No. SR–PEARL–2019–15]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX PEARL Fee Schedule

May 8, 2019.

Pursuant to the provisions of 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 April 29, 2019, MIAX PEARL, LLC (''MIAX PEARL'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX PEARL Fee Schedule (the ''Fee Schedule'').

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX PEARL's principal office, 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 the Add/Remove Tiered Rebates/Fees set forth in Section (1)(a) of the Fee Schedule to remove one of the conditions that must be met in order for Members [3] to qualify for an alternative lower Taker fee for Penny classes for their Firm Origin orders when trading contra to Origins other than Priority Customer [4] if certain thresholds are satisfied by the Member.

The Exchange currently assesses transaction rebates and fees to all market participants which are based upon the total monthly volume executed by the Member on MIAX PEARL in the relevant, respective origin type (not including Excluded Contracts) [5] expressed as a percentage of TCV.[6] In addition, the per contract transaction rebates and fees are applied retroactively to all eligible volume for that origin type once the respective threshold tier (''Tier'') has been reached by the Member. The Exchange aggregates the volume of Members and their Affiliates.[7] Members that place resting liquidity, *i.e.,* orders resting on the book of the MIAX PEARL System,[8] are paid the specified ''maker'' rebate (each a ''Maker''), and Members that execute against resting liquidity are assessed the specified ''taker'' fee (each a ''Taker''). For opening transactions and ABBO [9] uncrossing transactions, per contract transaction rebates and fees are waived for all market participants. Finally, Members are assessed lower transaction fees and receive lower rebates for order executions in standard option classes in the Penny Pilot Program [10] (''Penny classes'') than for order executions in standard option classes which are not in the Penny Pilot Program (''Non-Penny classes''), where Members are assessed higher transaction fees and receive higher rebates.

The Exchange established an alternative lower Taker fee that Members are able to qualify for in Penny classes for their Firm Origin orders when trading against Origins other than Priority Customer if certain thresholds are satisfied by the Member instead of the tier rate for the same segment that the Member would have otherwise achieved.[11] This threshold is denoted under the footnote ''◊'' on the Fee Schedule. Presently, Members may qualify for an alternative lower Taker fee of $0.48 for Penny classes for their Firm Origin when trading against Origins other than Priority Customer if the Member and their Affiliates: (1) Execute at least 2.00% of TCV in the relevant month in the Priority Customer Origin type, in all options classes, not including Excluded Contracts, as compared to TCV in all MIAX PEARL listed option classes; and (2) reach at least Tier 3 in the relevant month in Non-Priority Customers, Firms, Broker-Dealers and Non-MIAX PEARL Market Makers (collectively, ''Professional Members'') Origin types.

The Exchange proposes to remove the second condition that must be met in order for Members to qualify for the alternative lower Taker fee for Penny classes for their Firm Origin orders when trading contra to Origins other than Priority Customer if certain thresholds are satisfied by the Member. Pursuant to this proposal, the only condition for Members to qualify for an alternative lower Taker fee of $0.48 for Penny classes for their Firm Origin when trading against Origins other than Priority Customer would be if the Member and their Affiliates execute at least 2.00% of TCV in the relevant month in the Priority Customer Origin type, in all options classes, not including Excluded Contracts, as

[3] ''Member'' means an individual or organization that is registered with the Exchange pursuant to Chapter II of the Exchange Rules for purposes of trading on the Exchange as an ''Electronic Exchange Member'' or ''Market Maker.'' Members are deemed ''members'' under the Exchange Act. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[4] ''Priority Customer'' means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Exchange Rule 100, including Interpretations and Policies .01.

[5] ''Excluded Contracts'' means any contracts routed to an away market for execution. *See* the Definitions Section of the Fee Schedule.

[6] ''TCV'' means total consolidated volume calculated as the total national volume in those classes listed on MIAX PEARL for the month for which the fees apply, excluding consolidated volume executed during the period time in which the Exchange experiences an ''Exchange System Disruption'' (solely in the option classes of the affected Matching Engine (as defined below)). The term Exchange System Disruption, which is defined in the Definitions section of the Fee Schedule, means an outage of a Matching Engine or collective Matching Engines for a period of two consecutive hours or more, during trading hours. The term Matching Engine, which is also defined in the Definitions section of the Fee Schedule, is a part of the MIAX PEARL electronic system that processes options orders and trades on a symbol-by-symbol basis. Some Matching Engines will process option classes with multiple root symbols, and other Matching Engines may be dedicated to one single option root symbol (for example, options on SPY may be processed by one single Matching Engine that is dedicated only to SPY). A particular root symbol may only be assigned to a single designated Matching Engine. A particular root symbol may not be assigned to multiple Matching Engines. The Exchange believes that it is reasonable and appropriate to select two consecutive hours as the amount of time necessary to constitute an Exchange System Disruption, as two hours equates to approximately 1.4% of available trading time per month. The Exchange notes that the term ''Exchange System Disruption'' and its meaning have no applicability outside of the Fee Schedule, as it is used solely for purposes of calculating volume for the threshold tiers in the Fee Schedule. *See* the Definitions Section of the Fee Schedule.

[7] ''Affiliate'' means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An ''Appointed Market Maker'' is a MIAX PEARL Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an ''Appointed EEM'' is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAX PEARL Market Maker) that has been appointed by a MIAX PEARL Market Maker, pursuant to the process described in the Fee Schedule. *See* the Definitions Section of the Fee Schedule.

[8] The term ''System'' means the automated trading system used by the Exchange for the trading of securities. *See* Exchange Rule 100.

[9] ''ABBO'' means the best bid(s) or offer(s) disseminated by other Eligible Exchanges (defined in Exchange Rule 1400(f)) and calculated by the Exchange based on market information received by the Exchange from OPRA. *See* the Definitions Section of the Fee Schedule. *See* Exchange Rule 100.

[10] *See* Securities Exchange Act Release No. 79778 (January 12, 2017), 82 FR 6662 (January 19, 2017) (SR–PEARL–2016–01).

[11] *See* Securities Exchange Act Release No. 85608 (April 11, 2019), 84 FR 16073 (April 17, 2019) (SR–PEARL–2019–13).

compared to TCV in all MIAX PEARL listed option classes. Pursuant to this proposal, Members and their Affiliates would no longer also be required to reach at least Tier 3 in the relevant month in the Professional Members Origin types in order to receive the alternative lower Taker fee.

The alternative lower Taker fee is specific to the Firm Origin and volume aggregation is based on Professional Members for tier purposes. Other Origins within Professional Members still get the tier rate assigned in the Professional Members table as set forth in Section (1)(a) of the Fee Schedule. The alternative lower Taker fee applies to Taker fees for Firm Origin orders in Penny classes in Tier 1 through Tier 4 in the relevant month in the Professional Members Origin types, in which Professional Members, including Firm, in those tiers are currently assessed a Taker fee of $0.50 for Tier 1 and Tier 2 and $0.49 for Tier 3 and Tier 4 when trading against Origins other than Priority Customer. The alternative lower Taker fee has no effect on Taker fees for Firm Origin orders in Penny classes in Tier 5 and Tier 6 in the relevant month in the Professional Members Origin types as the Taker fee in those tiers is already set at $0.48 when trading against Origins other than Priority Customer.

The purpose for removing the second condition is to make it easier for Members to qualify for the lower Taker fee, to incentivize Members to increase Firm Origin order flow on the Exchange. With the proposed change, the transaction rebates and fees in Section (1)(a) of the Fee Schedule for Professional Members would be the following:

Origin	Tier	Volume criteria	Per contract rebates/fees for penny classes				Per contract rebates/fees for non-penny classes	
			Maker ^ (contra origins ex priority customer)	Maker ^ (contra priority customer origin)	Taker ◊ (contra origins ex priority customer)	Taker (contra priority customer origin)	Maker ** ^	Taker **
Non-Priority Customer, Firm, BD, and Non-MIAX PEARL Market Makers.	1	0.00%–0.15%	($0.25)	($0.23)	$0.50	$0.50	($0.30)	$1.10
	2	Above 0.15%–0.40% ..	(0.40)	(0.38)	0.50	0.50	(0.30)	1.10
	3	Above 0.40%–0.65% ..	(0.40)	(0.38)	0.49	0.50	(0.60)	1.09
	4	Above 0.65%–1.00% ..	(0.47)	(0.45)	0.49	0.50	(0.65)	
	5	Above 1.00%–1.40% ..	(0.48)	(0.46)	0.48	0.50	(0.70)	1.08
	6	Above 1.40%	(0.48)	(0.46)	0.48	0.50	(0.85)	1.07

** Members may qualify for the Maker Rebate and the Taker Fee associated with the highest Tier for transactions in Non-Penny classes if the Member executes more than 0.30% volume in Non-Penny classes, not including Excluded Contracts, as compared to the TCV in all MIAX PEARL listed option classes. For purposes of qualifying for such rates, the Exchange will aggregate the volume transacted by Members and their Affiliates in the following Origin types in Non-Penny classes: MIAX PEARL Market Makers, and Non-Priority Customer, Firm, BD, and Non-MIAX PEARL Market Makers.

^ Members may qualify for Maker Rebates equal to the greater of: (A) ($0.40) for Penny Classes and ($0.65) for Non-Penny Classes, or (B) the amount set forth in the applicable Tier reached by the Member in the relevant Origin, if the Member and their Affiliates execute at least 2.00% volume in the relevant month, in Priority Customer Origin type, in all options classes, not including Excluded Contracts, as compared to the TCV in all MIAX PEARL listed option classes.

◊ Members may qualify for Taker Fees of $0.48 for Penny classes for their Firm Origin when trading against Origins not Priority Customer if the Member and their Affiliates execute at least 2.00% of TCV in the relevant month in the Priority Customer Origin type, in all options classes, not including Excluded Contracts, as compared to TCV in all MIAX PEARL listed option classes.

The proposed rule change is to become operative May 1, 2019.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [12] in general, and furthers the objectives of Section 6(b)(4) of the Act,[13] in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and issuers and other persons using its facilities, and 6(b)(5) of the Act,[14] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange's proposal to remove the second condition that must be met in order for Members to qualify for the alternative lower Taker fee for Penny classes for their Firm Origin orders when trading contra to Origins other than Priority Customer if certain thresholds are satisfied by the Member, is consistent with Section 6(b)(4) of the Act [15] because it applies equally to all Members for their Firm Origin with similar affiliated order flow. The Exchange believes that its proposal is fair, equitable, and not unreasonably discriminatory because it will make it easier for Members to qualify for the lower Taker fee, and will encourage Members to submit both Firm and Priority Customer orders, which will increase liquidity and benefit all market participants by providing more trading opportunities and tighter spreads. The Exchange believes that the proposal is reasonable because it will incentivize providers of Priority Customer order flow to send that Priority Customer order flow to the Exchange in order to obtain the highest volume threshold and receive a Taker fee in a manner that enables the Exchange to improve its overall competitiveness and strengthen its market quality for all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

MIAX PEARL 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.

The Exchange further believes that its proposal to remove the second condition that must be met in order for Members to qualify for the alternative lower Taker fee for Penny classes for their Firm Origin orders when trading contra to Origins other than Priority Customer if certain thresholds are satisfied by the Member, that will apply instead of the Taker fee otherwise applicable to such orders, will not have an impact on intra-market competition. Specifically, the Exchange believes the proposal for any Member to be able to qualify for a Taker fee of $0.48 per contract for their Firm Orders when trading against Origins other than Priority Customer, when Members and their Affiliates execute at least 2.00% of TCV in the relevant month in the Priority Customer Origin type, in all options classes, not including Excluded Contracts, as compared to TCV in all MIAX PEARL listed option classes, will increase volume of Firm and Priority

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78f(b)(1) and (b)(5).

[15] 15 U.S.C. 78f(b)(4).

Customer order flow. The Exchange believes that the increased order flow will result in increased liquidity which benefits all Exchange participants by providing more trading opportunities and tighter spreads. Because the proposal makes it easier for a Member to receive a lower Taker fee for their Firm Origin instead of the Taker fee otherwise applicable to such orders in Tier 1 through Tier 4 for Professional Members, the Exchange believes that the proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its rebates and fees to remain competitive with other exchanges and to attract order flow. The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner that encourages market participants to continue to provide liquidity and to send order flow to the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[16] and Rule 19b–4(f)(2)[17] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–PEARL–2019–15 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–PEARL–2019–15. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PEARL–2019–15, and should be submitted on or before June 4, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–09867 Filed 5–13–19; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(3)(A)(ii).

[17] 17 CFR 240.19b–4(f)(2).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85808; File No. SR–MIAX–2019–22]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

May 8, 2019.

Pursuant to the provisions of 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 April 29, 2019, Miami International Securities Exchange LLC (''MIAX Options'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a 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 is filing a proposal to amend the MIAX Options Fee Schedule (the ''Fee Schedule'') to adopt certain SPIKES transaction fees.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings,* at MIAX's principal office, 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 adopted its initial SPIKES transaction fees on February 15,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

2019.[3] The Exchange now proposes to amend the Fee Schedule to adopt certain SPIKES transaction fees. Specifically, the Exchange proposes to adopt new fees for SPIKES Combinations [4] in cPRIME,[5] and to make minor non-substantive, technical changes to the Fee Schedule.

SPIKES Combinations

The Exchange is proposing to adopt a new fee table for SPIKES Combinations executed in cPRIME Auctions. As proposed, the Exchange will charge a SPIKES Combination executed in a cPRIME Auction on a per contract per leg basis, based on Origin. All Origins will be charged the same rate of $0.01 for Initiating, Contra, and Responder (with the exception of an Initiating Priority Customer which will be assessed a charge of $0.00) per contract per leg. As proposed, all Origins (Priority Customer, Market Maker, Non-MIAX Market Maker, Broker-Dealer, Firm Proprietary, and Public Customer that is Not a Priority Customer) will receive a $0.01 Break-up Credit.

As proposed, the Combinations in cPRIME table will be as follows:

COMBINATIONS IN CPRIME

Origin	Initiating	Contra	Responder	Break-up
Priority Customer	$0.00	$0.01	$0.01	($0.01)
Market Maker	0.01	0.01	0.01	(0.01)
Non-MIAX Market Maker	0.01	0.01	0.01	(0.01)
Broker-Dealer	0.01	0.01	0.01	(0.01)
Firm Proprietary	0.01	0.01	0.01	(0.01)
Public Customer that is Not a Priority Customer	0.01	0.01	0.01	(0.01)

The Exchange proposes to make a minor non-substantive change to the Simple and Complex Fees table to edit footnote ''+'' by adding the sentence, ''The Complex Large Trade Discount does not apply to SPIKES Combination Orders,'' to the end of the footnote.

As proposed, the Simple and Complex Fees table will be as follows:

SIMPLE AND COMPLEX FEES #

Origin	Simple /complex ¥ maker	Simple /complex ¥ taker	Simple opening	13, Combination ~ !	Simple large trade discount threshold +	Complex large trade discount threshold +
Priority Customer	$0.00	$0.00	$0.00	$0.00	0	0.
Market Maker	0.00	* 0.20	0.15	0.01	First 10,000 contracts	First 25,000 contracts.
Non-MIAX Market Maker.	0.10	0.25	0.15	0.01	First 10,000 contracts	First 25,000 contracts.
Broker-Dealer	0.10	0.25	0.15	0.01	First 10,000 contracts	First 25,000 contracts.
Firm Proprietary	0.00	* 0.20	0.15	0.01	First 10,000 contracts	First 25,000 contracts.
Public Customer that is Not a Priority Customer.	0.10	0.25	0.15	0.01	First 10,000 contracts	First 25,000 contracts.

* Taker fees for options with a premium price of $0.10 or less will be charged $0.05 per contract.

~ A ''SPIKES Combination'' is a purchase (sale) of a SPIKES call option and sale (purchase) of a SPIKES put option having the same expiration date and strike price.

! The SPIKES Combination portion of a SPIKES Combination Order will be charged at the Combination rate and other legs will be charged at the Complex rate. All fees are per contract per leg.

+ Tied to Single Order/Quote ID. For any single order/quote, no fee shall apply to the number of contracts executed above the Simple or Complex Large Trade Discount Threshold. This discount does not apply to Priority Customer orders, Maker orders, SPIKES Opening orders, and the Surcharge. For any SPIKES Combination Order, no fee shall apply to the number of contracts executed above the Complex Large Trade Discount Threshold. The Complex Large Trade Discount does not apply to SPIKES Combination Orders.

¥ For quotes/orders in a Complex Auction, Priority Customer Complex Orders will receive the Complex Maker rate. Origins that are not a Priority Customer will be charged the applicable Complex Taker rate.

The Exchange also proposes to make a minor non-substantive change to the PRIME [6] and cPRIME Fees table to edit footnote ''<>'' by adding the sentence, ''The cPRIME Large Trade Discount does not apply to SPIKES Combination Orders,'' to the end of the footnote.

Additionally, the Exchange proposes to add explanatory text below the table

[3] *See* Securities Exchange Release No. 85283 (March 11, 2019), 84 FR 9567 (March 15, 2019) (SR–MIAX–2019–11). (The Exchange initially filed the proposal on February 15, 2019 (SR–MIAX–2019–04). That filing was withdrawn and replaced with (SR–MIAX–2019–11)).

[4] A ''Combination'' is a purchase (sale) of a SPIKES call option and the sale (purchase) of a SPIKES put option having the same expiration date and strike price.

[5] cPRIME is the process by which a Member may electronically submit a ''cPRIME Order'' (as defined in Exchange Rule 518(b)(7)) it represents as agent (a ''cPRIME Agency Order'') against principal or solicited interest for execution (a ''cPRIME Auction''). *See* Interpretation and Policy .12 of Exchange Rule 515A.

[6] PRIME is a process by which a Member may electronically submit for execution (''Auction'') an order it represents as agent (''Agency Order'') against principal interest, and/or an Agency Order against solicited interest. *See* Exchange Rule 515A(a).

that explains how fees and credits are charged and assessed for SPIKES in PRIME and for SPIKES in cPRIME. The Exchange notes that this text is substantially similar to existing text in the current Fee Schedule for PRIME [7] and cPRIME [8] for multi-listed symbols.

As proposed, the PRIME and cPRIME Fees table will be as follows:

PRIME AND cPRIME FEES #

Origin	Initiating	Contra	Responder	Break-up	PRIME large trade discount threshold ^	cPRIME large trade discount threshold ◊
Priority Customer	$0.00	$0.20	$0.25	$(0.15)	First 10,000 contracts	First 25,000 contracts.
Market Maker	0.10	0.20	0.25	(0.15)	First 10,000 contracts	First 25,000 contracts.
Non-MIAX Market Maker.	0.10	0.20	0.25	(0.15)	First 10,000 contracts	First 25,000 contracts.
Broker-Dealer	0.10	0.20	0.25	(0.15)	First 10,000 contracts	First 25,000 contracts.
Firm Proprietary	0.10	0.20	0.25	(0.15)	First 10,000 contracts	First 25,000 contracts.
Public Customer that is Not a Priority Customer.	0.10	0.20	0.25	(0.15)	First 10,000 contracts	First 25,000 contracts.

An Index License Surcharge (''Surcharge'') of $0.075 will apply to any contract that is executed by an Origin except Priority Customer. The Surcharge applies per contract side per leg. The Surcharge will be waived for the ''Waiver Period'' which, for purposes of this Section (1)(a)(xi) of the Fee Schedule, means the period of time from the launch of trading of SPIKES options until such time that the Exchange submits a filing to terminate the Waiver Period. The Exchange will issue a Regulatory Circular announcing the end of the Waiver Period at least fifteen (15) days prior to the termination of the Waiver Period and effective date of such Surcharge.

^ The transaction fee for SPIKES PRIME will be capped at 10,000 contracts from a single order, for the Agency Side and Contra Side independently. Contracts greater than the threshold will not be charged the transaction fee but will continue to be charged the Surcharge. Responder fees and Break-up Credits will not be capped.

◊ The transaction fee for SPIKES cPRIME will be capped at 25,000 contracts that are traded per strategy from a single order, for the Agency Side and for the Contra Side independently. Contracts greater than the threshold will not be charged the transaction fee but will continue to be charged the Surcharge. Responder fees and Break-up Credits will not be capped. The cPRIME Large Trade Discount does not apply to SPIKES Combination Orders.

For SPIKES in PRIME, MIAX will assess the Responder to PRIME Auction Fee to: (i) A PRIME AOC Response that executes against a PRIME Order, and (ii) a PRIME Participating Quote or Order that executes against a PRIME Order. MIAX will apply the PRIME Break-up credit to the EEM that submitted the PRIME Order for agency contracts that are submitted to the PRIME Auction that trade with a PRIME AOC Response or a PRIME Participating Quote or Order that trades with the PRIME Order.

For SPIKES in cPRIME, all fees and credits are per contract per leg for Complex and Combination volume. Further, MIAX will assess the Responder to cPRIME Auction Fee to: (i) A cPRIME AOC Response that executes against a cPRIME Order, and (ii) a cPRIME Participating Quote or Order that executes against a cPRIME Order. MIAX will apply the cPRIME Break-up credit to the EEM that submitted the cPRIME Order for agency contracts that are submitted to the cPRIME Auction that trade with a cPRIME AOC Response or a cPRIME Participating Quote or Order that trades with the cPRIME Order.

The proposed rule change is to become operative May 1, 2019.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [9] in general, and furthers the objectives of Section 6(b)(4) of the Act [10] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among Exchange Members [11] and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act [12] in that it is designed 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 and is not designed to permit unfair discrimination between customer, issuers, brokers and dealers.

SPIKES Combinations in cPRIME

The Exchange believes that the proposed fee changes for SPIKES Combinations in cPRIME are consistent with Section 6(b)(4) of the Act in that they are reasonable, equitable, and not unfairly discriminatory. The proposed fee changes are reasonably designed as they align to the fees charged for SPIKES Combination orders under the Simple and Complex Fees table.[13] Under the Simple and Complex Fees table all Market Maker, Non-MIAX Market Maker, Broker-Dealer, Firm Proprietary, and Public Customer that is Not a Priority Customer Origins are charged the same amount, $0.01 (Priority Customers are charged a fee of $0.00). The exchanges in general have historically aimed to improve markets for investors and develop various features within market structure for customer benefit. The Exchange assesses Priority Customers lower or no transaction fees because Priority Customer order flow enhances liquidity on the Exchange for the benefit of all market participants. Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding

[7] *See* MIAX Options Fee Schedule (1)(a)(v) MIAX Price Improvement Mechanism (''PRIME'') Fees.

[8] *See* MIAX Options Fee Schedule (1)(a)(vi) MIAX Complex Price Improvement Mechanism (''cPRIME'') Fees.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[12] 15 U.S.C. 78f(b)(5).

[13] *See* MIAX Options Exchange Fee Schedule (1)(a)(xi).

increase in order flow from other market participants.

Similarly, under the Combinations in cPRIME Fee table all Market Maker, Non-MIAX Market Maker, Broker-Dealer, Firm Proprietary, and Public Customer that is Not a Priority Customer, Initiating Origins are charged the same amount, $0.01 (Initiating Priority Customers are charged a fee of $0.00). The Exchange believes that its fees are equitable and not unfairly discriminatory as all Contra and Responder Origin types (Priority Customer included) will be charged a fee of $0.01, and all Origin types will receive the same Break-up Credit of $0.01.

The Exchange also believes that aligning the Combinations in cPRIME Fee table with the fees charged for Combination orders on the Exchange unifies the Exchange's fee structure for SPIKES Combination Orders, which benefits investors as it clarifies the Exchange's fees and reduces the risk of confusion.

The proposed SPIKES Combination in cPRIME fees are reasonable, equitable, and not unfairly discriminatory because they will apply similarly to Priority Customer orders, Market Maker orders, Non-MIAX Market Maker orders, Broker Dealer orders, Firm Proprietary orders, and Public Customers that are not Priority Customers orders, in each respective category for cPRIME orders. Initiating Priority Customers orders are provided a discount as Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. Contra, Responder, and Break-up credits are applied uniformly to each Origin; Priority Customer, Market Maker, Non-MIAX Market Maker, Broker-Dealer, Firm Proprietary, and Public Customer that is Not a Priority Customer. All similarly situated categories of participants are subject to the same transaction fee and credit schedule, and access to the Exchange is offered on terms that are not unfairly discriminatory.

The Exchange believes adding a footnote to the Simple and Complex Fees table stating that the Complex Large Trade Discount does not apply to SPIKES Combination Orders is reasonable, equitable, and not unfairly discriminatory as SPIKES Combination Orders are charged a substantially reduced fee as indicated on the Simple and Complex Fees table and do not need the benefit of the Complex Large Trade Discount as SPIKES Combination Orders are already substantially discounted.[14] Additionally, the Exchange believes adding a footnote to the PRIME and cPRIME Fees table stating that the cPRIME Large Trade Discount does not apply to SPIKES Combination Orders is reasonable, equitable, and not unfairly discriminatory as SPIKES Combination Orders are charged a substantially reduced fee as indicated on the proposed Combinations in cPRIME table and do not need the benefit of the cPRIME Large Trade Discount as SPIKES Combination Orders are already substantially discounted. The Exchange believes providing this change benefits investors as it clarifies the Exchange's fees and reduces the risk of confusion.

The non-substantive technical change proposed to the explanatory notes of the PRIME and cPRIME Fees table to add a description of how PRIME and cPRIME fees will be applied to SPIKES Orders promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general protects investors and the public interest by clarifying how PRIME and cPRIME fees and credits will be applied similarly to multi-listed symbols. Additionally, adding the explanatory text below the PRIME and cPRIME Fees table benefits investors as it promotes uniformity within the Exchange's Fee Schedule and clarifies the application of PRIME and cPRIME fees for SPIKES orders and other orders on the Exchange.

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. The Exchange believes that the proposed change will enhance the competitiveness of the Exchange relative to other exchanges that offer their own singly-listed products. The Exchange believes that the proposed fees and rebates for transactions in SPIKES index options are not going to have an impact on intra-market competition based on the total cost for participants to transact in such order types versus the cost for participants to transact in other order types available for trading on the Exchange.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues and competing products if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. The Exchange believes that the proposed rule change reflects this competitive environment because it is adjusting its fees in a manner that encourages market participants to provide liquidity in SPIKES index options.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[15] and Rule 19b–4(f)(2)[16] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

[14] *See* MIAX Options Fee Schedule (1)(a)(xi).

[15] 15 U.S.C. 78s(b)(3)(A)(ii).

[16] 17 CFR 240.19b–4(f)(2).

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2019–22 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–MIAX–2019–22. 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–MIAX–2019–22 and should be submitted on or before June 4, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–09859 Filed 5–13–19; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85804; File No. SR–CboeBZX–2019–035]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To List And Trade Under BZX Rule 14.11(c)(4) the Shares of the iShares iBonds 2021 Term High Yield and Income ETF, iShares iBonds 2022 Term High Yield and Income ETF, iShares iBonds 2023 Term High Yield and Income ETF, iShares iBonds 2024 Term High Yield and Income ETF, and iShares iBonds 2025 Term High Yield and Income ETF of iShares Trust

May 8, 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 April 26, 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

The Exchange proposes to list and trade under BZX Rule 14.11(c)(4) the shares of the iShares iBonds 2021 Term High Yield and Income ETF (the ''2021 Fund''), iShares iBonds 2022 Term High Yield and Income ETF (the ''2022 Fund''), iShares iBonds 2023 Term High Yield and Income ETF (the ''2023 Fund''), iShares iBonds 2024 Term High Yield and Income ETF (the ''2024 Fund''), and iShares iBonds 2025 Term High Yield and Income ETF (the ''2025 Fund'', each a ''Fund'' and, collectively, the ''Funds'') of iShares Trust (the ''Trust'').

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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares (''Shares'') of the Funds under BZX Rule 14.11(c)(4),[5] which governs the listing and trading of index fund shares based on fixed income securities indexes. The Shares will be offered by the Trust, which was established as a Delaware statutory trust on December 16, 1999. The Trust is registered with the Commission as an open-end investment company and has filed a registration statement on behalf of the Funds on Form N–1A (''Registration Statement'') with the Commission.[6]

The Exchange notes that the Underlying Indexes, as defined below, currently meet the requirements of Rule 14.11(c)(4)(B)(i)(f) (the ''90% Rule''),[7]

[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 Commission approved BZX Rule 14.11(c) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018).

[6] *See* Registration Statement on Form N–1A for the Trust, dated February 7, 2019 (File Nos. 333–92935 and 811–09729). The descriptions of the Funds and the Shares contained herein are based, in part, on information in the Registration Statement. The Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') (the ''Exemptive Order''). *See* Investment Company Act Release No. 27661 (January 17, 2007) (File No. 812–13208).

[7] Rule 14.11(c)(4)(B)(i)(f) provides that ''component securities that in aggregate account for at least 90% of the Fixed Income Securities portion of the weight of the index or portfolio must be either: (1) From issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act; (2) from issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of $700 million or more; (3) from issuers that have outstanding securities that are notes, bonds, debentures, or evidence of indebtedness having a total remaining principal amount of at least $1 billion; (4) exempted

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but the Exchange submits this proposal because, the Underlying Indexes may not meet this requirement in the future.[8] As such, the Exchange is proposing to instead require that component securities that in aggregate account for at least 85% of the fixed income weight of the portfolio fall into at least one of five of the categories included in the 90% Rule. The Underlying Indexes currently meet and will continue to meet all other requirements of Rule 14.11(c)(4).[9] If a Fund or the related Shares are not in compliance with the applicable listing requirements, then, with respect to such Fund or Shares, the Exchange will commence delisting procedures under Exchange Rule 14.12.

Description of the Shares and the Funds

BlackRock Fund Advisors (''BFA'') is the investment adviser to the Funds.[10] State Street Bank and Trust Company is the administrator, custodian, and transfer agent for the Trust. Bloomberg Index Services Limited is the index provider (the ''Index Provider'' or ''Bloomberg'') for the Funds. BlackRock Investments, LLC serves as the distributor for the Trust.

Bloomberg Barclays 2021 Term High Yield and Income Index

According to the Registration Statement, the 2021 Fund will seek to track the investment results, before fees and expenses, of the Bloomberg Barclays 2021 Term High Yield and Income Index (the ''2021 Index''), which is rebalanced monthly and composed of U.S. dollar-denominated, high yield and other income generating corporate bonds maturing in 2021.

The 2021 Index is composed of U.S. dollar-denominated, taxable, fixed-rate, high yield and BBB or equivalently rated (as determined by the Index Provider) corporate bonds scheduled to mature after December 31, 2020 and before December 15, 2021.

The bonds in the 2021 Index have $250 million or more of outstanding face value at the time of inclusion. The non-U.S. corporate issuers included in the 2021 Index consist primarily of corporate bonds issued by companies domiciled in developed countries. The 2021 Fund will invest in non-U.S. issuers to the extent necessary for it to track the 2021 Index. Each bond included in the 2021 Index must be registered with the SEC, have been exempt from registration at issuance, or have been offered pursuant to Rule 144A under the Securities Act of 1933, as amended (the ''1933 Act'').

The 2021 Index consists of bonds chosen from two sub-indices, the Bloomberg Barclays U.S. High Yield Index (the ''High Yield Index'') and the Bloomberg Barclays U.S. Corporate Index (the ''Corporate Index''), both of which are stripped of securities maturing outside of the maturity range defined above. BBB-rated bonds from the Corporate Index will be introduced to the 2021 Index under the following conditions occurring at rebalance: (1) In the last 2.5 years but before the last 6 months of the 2021 Index's term, the 2021 Index will add BBB-rated bonds as constituent high yield bonds are called, no longer qualify for inclusion, or decline in value compared to a reference point set at 2.5 years from the 2021 Index's term or (2) if, prior to the last 2.5 years remaining in the 2021 Index's term, the market value of the high yield bonds in the 2021 Index declines below $30 billion, the 2021 Index will add BBB-rated bonds to maintain a $30 billion minimum market value for the 2021 Index. In the final year of the 2021 Index's term, any principal and interest paid by index constituents is treated as follows: (1) During the first six months of the final year, the 2021 Index reinvests proceeds pro-rata into the remaining bonds in the 2021 Index, and (2) during the last six months of the final year, proceeds are not reinvested and are presumed to be held in cash while earning no interest.

Bloomberg Barclays 2022 Term High Yield and Income Index

According to the Registration Statement, the 2022 Fund will seek to track the investment results, before fees and expenses, of the Bloomberg Barclays 2022 Term High Yield and Income Index (the ''2022 Index''), which is rebalanced monthly and composed of U.S. dollar-denominated, high yield and other income generating corporate bonds maturing in 2022.

The 2022 Index is composed of U.S. dollar-denominated, taxable, fixed-rate, high yield and BBB or equivalently rated (as determined the by Index Provider) corporate bonds scheduled to mature after December 31, 2021 and before December 15, 2022.

The bonds in the 2022 Index have $250 million or more of outstanding face value at the time of inclusion. The non-U.S. corporate issuers included in the 2022 Index consist primarily of corporate bonds issued by companies domiciled in developed countries. The 2022 Fund will invest in non-U.S. issuers to the extent necessary for it to track the 2022 Index. Each bond included in the 2022 Index must be registered with the SEC, have been exempt from registration at issuance, or have been offered pursuant to Rule 144A under the 1933 Act.

The 2022 Index consists of bonds chosen from two sub-indices, the High Yield Index and the Corporate Index, both of which are stripped of securities maturing outside of the maturity range defined above. BBB-rated bonds from the Corporate Index will be introduced to the 2022 Index under the following conditions occurring at rebalance: (1) In the last 2.5 years but before the last 6 months of the 2022 Index's term, the 2022 Index will add BBB-rated bonds as constituent high yield bonds are called, no longer qualify for inclusion, or decline in value compared to a reference point set at 2.5 years from the 2022 Index's term or (2) if, prior to the last 2.5 years remaining in the 2022 Index's term, the market value of the high yield bonds in the 2022 Index declines below $30 billion, the 2022 Index will add BBB-rated bonds to maintain a $30 billion minimum market value for the 2022 Index. In the final year of the 2022 Index's term, any principal and interest paid by index constituents is treated as follows: (1) During the first six months of the final year, the 2022 Index reinvests proceeds pro-rata into the remaining bonds in the 2022 Index, and (2) during the last six months of the final year, proceeds are not reinvested and are presumed to be held in cash while earning no interest.

securities as defined in Section 3(a)(12) of the Act; or (5) from issuers that are a government of a foreign country or a political subdivision of a foreign country.'' The Exchange instead is proposing that at least 85% of the fixed income weight of each portfolio will satisfy at least one of parts (1) through (5) described above.

[8] As of January 31, 2019, the following percentages of the Fixed Income Securities portion of the weight of each respective Underlying Index satisfied the criteria of Rule 14.11(c)(4)(B)(i)(f): 91.24% of the 2021 Index; 91.03% of the 2022 Index; 93.55% of the 2023 Index; 96.22% of the 2024 Index; and 92.69% of the 2025 Index.

[9] The Exchange notes that the Commission has recently approved a proposal to list and trade a series of Managed Fund Shares that would not comply with the equivalent of the 90% Rule for Managed Fund Shares, which is substantively identical to the 90% Rule. Specifically, that series was approved to list and trade on Nasdaq Stock Market LLC as long as the fund's fixed income holdings that are not ABS and private MBS met the equivalent of the 90% Rule. The fund was allowed to hold up to 20% of the weight of the fixed income portion of the portfolio in ABS and private MBS, effectively reducing the threshold for compliance with the equivalent to the 90% Rule to 70%. Here, the Exchange is proposing only to reduce the compliance threshold for the 90% Rule to 85% and further believes that there are additional factors that further mitigate the policy concerns underlying the 90% Rule, as further discussed below. *See* Securities Exchange Act Release No. 84047 (September 6, 2018), 83 FR 46200 (September 12, 2018) (SR–NASDAQ–2017–128) (the ''Approval Order'').

[10] BFA is an indirect wholly owned subsidiary of BlackRock, Inc.

Bloomberg Barclays 2023 Term High Yield and Income Index

According to the Registration Statement, the 2023 Fund will seek to track the investment results, before fees and expenses, of the Bloomberg Barclays 2023 Term High Yield and Income Index (the ''2023 Index''), which is rebalanced monthly and composed of U.S. dollar-denominated, high yield and other income generating corporate bonds maturing in 2023.

The 2023 Index is composed of U.S. dollar-denominated, taxable, fixed-rate, high yield and BBB or equivalently rated (as determined by the Index Provider) corporate bonds scheduled to mature after December 31, 2022 and before December 15, 2023.

The bonds in the 2023 Index have $250 million or more of outstanding face value at the time of inclusion. The non-U.S. corporate issuers included in the 2023 Index consist primarily of corporate bonds issued by companies domiciled in developed countries. The 2023 Fund will invest in non-U.S. issuers to the extent necessary for it to track the 2023 Index. Each bond included in the 2023 Index must be registered with the SEC, have been exempt from registration at issuance, or have been offered pursuant to Rule 144A under the 1933 Act.

The 2023 Index consists of bonds chosen from two sub-indices, the High Yield Index and the Corporate Index, both of which are stripped of securities maturing outside of the maturity range defined above. BBB-rated bonds from the Corporate Index will be introduced to the 2023 Index under the following conditions occurring at rebalance: (1) In the last 2.5 years but before the last 6 months of the 2023 Index's term, the 2023 Index will add BBB-rated bonds as constituent high yield bonds are called, no longer qualify for inclusion, or decline in value compared to a reference point set at 2.5 years from the 2023 Index's term or (2) if, prior to the last 2.5 years remaining in the 2023 Index's term, the market value of the high yield bonds in the 2023 Index declines below $30 billion, the 2023 Index will add BBB-rated bonds to maintain a $30 billion minimum market value for the 2023 Index. In the final year of the 2023 Index's term, any principal and interest paid by index constituents is treated as follows: (1) During the first six months of the final year, the 2023 Index reinvests proceeds pro-rata into the remaining bonds in the 2023 Index, and (2) during the last six months of the final year, proceeds are not reinvested and are presumed to be held in cash while earning no interest.

Bloomberg Barclays 2024 Term High Yield and Income Index

According to the Registration Statement, the 2024 Fund will seek to track the investment results, before fees and expenses, of the Bloomberg Barclays 2024 Term High Yield and Income Index (the ''2024 Index''), which is rebalanced monthly and composed of U.S. dollar-denominated, high yield and other income generating corporate bonds maturing in 2024.

The 2024 Index is composed of U.S. dollar-denominated, taxable, fixed-rate, high yield and BBB or equivalently rated (as determined by the Index Provider) corporate bonds scheduled to mature after December 31, 2023 and before December 15, 2024.

The bonds in the 2024 Index have $250 million or more of outstanding face value at the time of inclusion. The non-U.S. corporate issuers included in the 2024 Index consist primarily of corporate bonds issued by companies domiciled in developed countries. The 2024 Fund will invest in non-U.S. issuers to the extent necessary for it to track the 2024 Index. Each bond included in the 2024 Index must be registered with the SEC, have been exempt from registration at issuance, or have been offered pursuant to Rule 144A under the 1933 Act.

The 2024 Index consists of bonds chosen from two sub-indices, the High Yield Index and the Corporate Index, both of which are stripped of securities maturing outside of the maturity range defined above. BBB-rated bonds from the Corporate Index will be introduced to the 2024 Index under the following conditions occurring at rebalance: (1) In the last 2.5 years but before the last 6 months of the 2024 Index's term, the 2024 Index will add BBB-rated bonds as constituent high yield bonds are called, no longer qualify for inclusion, or decline in value compared to a reference point set at 2.5 years from the 2024 Index's term or (2) if, prior to the last 2.5 years remaining in the 2024 Index's term, the market value of the high yield bonds in the 2024 Index declines below $30 billion, the 2024 Index will add BBB-rated bonds to maintain a $30 billion minimum market value for the 2024 Index. In the final year of the 2024 Index's term, any principal and interest paid by index constituents is treated as follows: (1) During the first six months of the final year, the 2024 Index reinvests proceeds pro-rata into the remaining bonds in the 2024 Index, and (2) during the last six months of the final year, proceeds are not reinvested and are presumed to be held in cash while earning no interest.

Bloomberg Barclays 2025 Term High Yield and Income Index

According to the Registration Statement, the 2025 Fund will seek to track the investment results, before fees and expenses, of the Bloomberg Barclays 2025 Term High Yield and Income Index (the ''2025 Index'' and, collectively with the 2021 Index, the 2022 Index, the 2023 Index, and the 2024 Index, the ''Underlying Indexes''), which is rebalanced monthly and composed of U.S. dollar-denominated, high yield and other income generating corporate bonds maturing in 2025.

The 2025 Index is composed of U.S. dollar-denominated, taxable, fixed-rate, high yield and BBB or equivalently rated (as determined by the Index Provider) corporate bonds scheduled to mature after December 31, 2024 and before December 15, 2025.

The bonds in the 2025 Index have $250 million or more of outstanding face value at the time of inclusion. The non-U.S. corporate issuers included in the 2025 Index consist primarily of corporate bonds issued by companies domiciled in developed countries. The 2025 Fund will invest in non-U.S. issuers to the extent necessary for it to track the 2025 Index. Each bond included in the 2025 Index must be registered with the SEC, have been exempt from registration at issuance, or have been offered pursuant to Rule 144A under the 1933 Act.

The 2025 Index consists of bonds chosen from two sub-indices, the High Yield Index and the Corporate Index, both of which are stripped of securities maturing outside of the maturity range defined above. BBB-rated bonds from the Corporate Index will be introduced to the 2025 Index under the following conditions occurring at rebalance: (1) In the last 2.5 years but before the last 6 months of the 2025 Index's term, the 2025 Index will add BBB-rated bonds as constituent high yield bonds are called, no longer qualify for inclusion, or decline in value compared to a reference point set at 2.5 years from the 2025 Index's term or (2) if, prior to the last 2.5 years remaining in the 2025 Index's term, the market value of the high yield bonds in the 2025 Index declines below $30 billion, the 2025 Index will add BBB-rated bonds to maintain a $30 billion minimum market value for the 2025 Index. In the final year of the 2025 Index's term, any principal and interest paid by index constituents is treated as follows: (1) During the first six months of the final year, the 2025 Index reinvests proceeds pro-rata into the remaining bonds in the 2025 Index, and (2) during the last six months of the

final year, proceeds are not reinvested and are presumed to be held in cash while earning no interest.

Portfolio Holdings

According to the Registration Statement, under Normal Market Conditions,[11] each Fund generally will invest at least 90% of its assets in the component securities of its respective Underlying Index, except during the last months of the Fund's operations, as described below. A Fund may also invest in other ETFs in order to obtain indirect exposure to such component securities.[12] A Fund may also invest up to 10% of its respective assets in certain listed derivatives, including futures, options and swap contracts,[13] U.S. government securities, short-term paper, cash and cash equivalents, including shares of money market funds advised by BFA or its affiliates, cash and cash equivalents, as well as in securities not included in the Underlying Index, but which BFA believes will help the Fund track the Underlying Index.

From time to time when conditions warrant, however, a Fund may invest at least 80% of its assets in the component securities of its respective Underlying Index. In the last months of a Fund's operation, as the bonds held by the Fund mature, the proceeds will not be reinvested by the Fund in bonds but instead will be held in cash and cash equivalents. By December 15 of each Fund's respective expiration year, the Fund's Underlying Index is expected to consist almost entirely of cash earned in this manner. Around the same time, the Fund will wind up and terminate, and its net assets will be distributed to then-current shareholders pursuant to a plan of liquidation.

[11] For purposes of this proposal and consistent with the definition in Rule 14.11(i)(3)(E) applicable to Managed Fund Shares, the term ''Normal Market Conditions'' includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues causing dissemination of inaccurate market information or system failures; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

[12] For purposes of this proposal, the term ETF means Portfolio Depositary Receipts, Index Fund Shares, and Managed Fund Shares as defined in Rule 14.11(b), 14.11(c), and 14.11(i), respectively, and their equivalents on other national securities exchanges.

[13] Such futures, options and swap contracts will include only the following: Interest rate futures, interest rate options, and interest rate swaps. The derivatives will be centrally cleared and they will be collateralized. At least 90% of the Fund's net assets that are invested in listed derivatives will be invested in instruments that trade in markets that are members or affiliates of members of the Intermarket Surveillance Group (''ISG'') or are parties to a comprehensive surveillance sharing with the Exchange.

Discussion

Based on the characteristics of the Underlying Indexes and the representations made in the Requirements for Index Constituents sections above, the Exchange believes it is appropriate to allow the listing and trading of the Shares. The Underlying Indexes and Funds each currently satisfy all of the generic listing requirements for Index Fund Shares based on a fixed income index. The Underyling Indexes and the Funds will also continue to satisfy all such generic listing requirements, with the possible exception to the 90% Rule. In the event that an Underlying Index no longer satisfies the 90% Rule, the Exchange is only requesting that the threshold applicable to the 90% Rule be lowered from 90% to 85% and will commence delisting procedures under Rule 14.12 for a Fund for which less than 85% of the weight of its respective Underlying Index satisfies one of the five applicable categories under the 90% Rule. Further, if a Fund or the related Shares are not in compliance with the applicable listing requirements under Rule 14.11(c)(4), then, with respect to such Fund or Shares, the Exchange will commence delisting procedures under Exchange Rule 14.12.

As such, the Exchange believes that this proposed limited exception to the 90% Rule is consistent with the Act for several reasons. Specifically, the Exchange believes that the limited nature of the proposed exception combined with the minimum size requirements applicable to each Underlying Index (a minimum outstanding face value of $250 million at the time of inclusion) act to mitigate the policy concerns which the 90% Rule is intended to address. With a minimum outstanding face value of $250 million, the issuances included in the Underlying Indexes will be large enough that such the types of instruments included in the Index will be more liquid and less susceptible to manipulation than smaller issuances that could otherwise be allowed under the generic listing standards. Further, this proposal is only seeking to reduce the possible weight of index constituents that meet the 90% Rule from 90% to 85%. Combining this minimal exception with the additional liquidity and lower likelihood of manipulation associated with the increased minimum outstanding face value of the issuance, the Exchange firmly believes that the concerns related to manipulation that underly the generic listing standards are sufficiently mitigated.

Further, the Exchange believes that this proposal is designed to address a near-miss of the generic listing standards because under current market conditions each of the Underlying Indexes meet the generic listing standards under Rule 14.11(c), and this proposed limited exception to the 90% Rule is designed to ensure that the Underlying Indexes would continue to meet the applicable continued listing standards under a broader array of possible future market conditions. Similarly, because the Funds could today (and potentially indefinitely into the future) be listed on the Exchange pursuant to the generic listing standards, such a limited exception provides investors with certainty as to whether the Funds will continue to be listed on the Exchange going forward. Finally, the Exchange is only proposing a reduction of the applicable standard from 90% to 85%, as noted above.

In addition, the Exchange represents that: (1) Except for Rule 14.11(c)(4)(B)(i)(b), each Underyling Index currently satisfies all of the generic listing standards under Rule 14.11(c)(4); (2) the continued listing standards under Rule 14.11(c), as applicable to Index Fund Shares based on fixed income securities, will apply to the Shares; and (3) the issuer of the Funds is required to comply with Rule 10A–3 [14] under the Act for the initial and continued listing of the Shares. In addition, the Exchange represents that each Fund will comply with all other requirements applicable to Index Fund Shares, including, but not limited to, requirements relating to the dissemination of key information such as the value of the Underlying Indexes and the Intraday Indicative Value (''IIV''),[15] rules governing the trading of equity securities, trading hours, trading halts, surveillance, information barriers and the Information Circular, as set forth in the Exchange rules applicable to Index Fund Shares and prior Commission orders approving the generic listing rules applicable to the listing and trading of Index Fund Shares.

The current value of each Underlying Index will be widely disseminated by one or more major market data vendors at least once per day, as required by Rule 14.11(c)(4)(C)(ii). The portfolio of

[14] 17 CFR 240.10A–3.

[15] The IIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Regular Trading Hours. Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IIVs taken from the Consolidated Tape Association (''CTA'') or other data feeds.

securities and other assets held by each Fund will be disclosed daily on its respective website at *www.ishares.com.* Further, each Fund's website will contain the Fund's prospectus and additional data relating to net asset value (''NAV'') and other applicable quantitative information. The issuer has represented that the NAV of each Fund will be calculated daily and will be made available to all market participants at the same time. The Index Provider is not a broker-dealer and is not affiliated with a broker-dealer. To the extent that the Index Provider becomes a broker-dealer or becomes affiliated with a broker-dealer, the Index Provider will implement and will maintain a ''fire wall'' around the personnel who have access to information concerning changes and adjustments to each Underlying Index and each Underlying Index shall be calculated by a third party who is not a broker-dealer or fund advisor. In addition, any advisory committee, supervisory board or similar entity that advises the Index Provider or that makes decisions on each Index, methodology and related matters, will implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the Underlying Indexes.

The Exchange's existing rules require that the issuer of the Funds notify the Exchange of any material change to the methodology used to determine the composition of an Underlying Index and, therefore, if the methodology of an Underlying Index was to be changed in a manner that would materially alter its existing composition, the Exchange would have advance notice and would evaluate the modifications to determine whether that Underyling Index remained sufficiently broad-based and well diversified.

Availability of Information

The Funds' website, which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Funds that may be downloaded. The website will include additional quantitative information updated on a daily basis, including, for each Fund: (1) The prior business day's reported NAV, daily trading volume, and a calculation of the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. Daily trading volume information for the Shares will also be available in the financial section of newspapers, through subscription services such as Bloomberg, Thomson Reuters, and International Data Corporation, which can be accessed by authorized participants and other investors, as well as through other electronic services, including major public websites. On each business day, each Fund will disclose on its website the identities and quantities of the portfolio of securities and other assets in the daily disclosed portfolio held by the Fund that formed the basis for the Fund's calculation of NAV at the end of the previous business day. The daily disclosed portfolio will include, as applicable: The ticker symbol; CUSIP number or other identifier, if any; a description of the holding (including the type of holding, such as the type of swap); the identity of the security, index or other asset or instrument underlying the holding, if any; for options, the option strike price; quantity held (as measured by, for example, par value, notional value or number of shares, contracts, or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and the percentage weighting of the holding in each Fund's portfolio. The website and information will be publicly available at no charge. The value, components, and percentage weightings of each Underlying Index will be calculated and disseminated at least once daily and will be available from major market data vendors. Rules governing each Fund's respective Underlying Indexes are available on Bloomberg's website and in the applicable Fund's prospectus.

In addition, an estimated value, defined in BZX Rule 14.11(c)(6)(A) as the IIV that reflects an estimated intraday value of each Fund's portfolio, will be disseminated. Moreover, the IIV will be based upon the current value for the components of the daily disclosed portfolio and will be updated and widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Regular Trading Hours.[16] In addition, the quotations of certain of a Fund's holdings may not be updated during U.S. trading hours if updated prices cannot be ascertained.

The dissemination of the IIV, together with the daily disclosed portfolio, will allow investors to determine the value of the underlying portfolio of each Fund on a daily basis and provide a close estimate of that value throughout the trading day.

Quotation and last sale information for the Shares will be available via the CTA high speed line. Price information regarding corporate bonds and other non-exchange traded assets including certain derivatives, money market funds and other instruments, and repurchase agreements is available from third party pricing services and major market data vendors. For exchange-traded assets, including futures, and certain options, such intraday information is available directly from the applicable listing exchange. In addition, price information for U.S. exchange-traded options will be available from the Options Price Reporting Authority.

Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances, administered by the Financial Industry Regulatory Authority (''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 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.[17]

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 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 the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the

[16] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IIVs published via the CTA or other data feeds.

[17] 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.

Exchange has in place a comprehensive surveillance sharing agreement. In addition, FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Funds reported to FINRA's Trade Reporting and Compliance Engine (''TRACE'').

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act [18] in general and Section 6(b)(5) of the Act [19] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria for Index Fund Shares based on a fixed income index in Rule 14.11(c)(4), with the possible exception of the 90% Rule. In the event that an Underlying Index no longer satisfies the 90% Rule, the Exchange is only requesting that the threshold applicable to the 90% Rule be lowered from 90% to 85% and will commence delisting procedures under Rule 14.12 for a Fund for which less than 85% of the weight of its respective Underlying Index satisfies one of the five applicable categories under the 90% Rule.

As such, the Exchange believes that this proposed limited exception to the 90% Rule is consistent with the Act for several reasons. Specifically, the Exchange believes that the limited nature of the proposed exception combined with the minimum size requirements applicable to each Underlying Index (a minimum outstanding face value of $250 million at the time of inclusion) act to mitigate the policy concerns which the 90% Rule is intended to address. With a minimum outstanding face value of $250 million, the issuances included in the Underlying Indexes will each be at least 2.5 times as large as the threshold provided in Rule 14.11(c)(4)(B)(i)(b), generally making such issuances more liquid and less susceptible to manipulation than smaller issuances that would be allowed under the generic listing standards. Further, this proposal is only seeking to reduce the possible weight of index constituents that meet the 90% Rule from 90% to 85%. Combining this minimal exception with the additional liquidity and lower likelihood of manipulation associated with the increased minimum outstanding face value of the issuance, the Exchange firmly believes that the concerns related to manipulation that underly the generic listing standards are sufficiently mitigated.

Further, under current market conditions each of the Underlying Indexes meet the generic listing standards under Rule 14.11(c), and this proposed limited exception to the 90% Rule is designed to ensure that the Underlying Indexes would continue to meet the applicable continued listing standards under a broader array of possible future market conditions. Similarly, because the Funds could today (and potentially indefinitely into the future) be listed on the Exchange pursuant to the generic listing standards, allowing such a limited exception provides investors with certainty as to whether the Funds will continue to be listed on the Exchange going forward. Finally, the Exchange is only proposing a reduction of the applicable standard from 90% to 85%, as noted above.

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange as well as cross-market surveillances administered by the FINRA on behalf of the Exchange, which are designed to detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange. The Exchange 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. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets that are members of the ISG. In addition, the Exchange will communicate as needed regarding trading in the Shares with other markets that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. FINRA, on behalf of the Exchange, is able to access, as needed, trade information for certain fixed income securities held by the Funds reported to TRACE.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that a large amount of information is publicly available regarding each Fund, thereby promoting market transparency. Each Fund's portfolio holdings will be disclosed on its respective website daily after the close of trading on the Exchange. Moreover, the IIV for the Shares will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Regular Trading Hours. The current value of each Underlying Index will be disseminated by one or more major market data vendors at least once per day. 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, and quotation and last sale information will be available via the CTA high-speed line. The website for the Funds will include the prospectus for each Fund and additional data relating to NAV and other applicable quantitative information.

If the Exchange becomes aware that a Fund's NAV is not being disseminated to all market participants at the same time, it will halt trading in the applicable Fund's Shares until such time as the NAV is available to all market participants. With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. 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. If the IIV and index value are not being disseminated for a Fund as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or index value occurs. If the interruption to the dissemination of an IIV or index value persists past the trading day in which it occurred, the Exchange will halt trading. The Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. The Exchange will halt trading in the Shares under the conditions specified in BZX Rule 11.18. 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 trading is not occurring in the securities and/or the financial instruments composing the daily disclosed portfolio of a Fund; or (2) whether other unusual conditions or circumstances detrimental to the

[18] 15 U.S.C. 78f.

[19] 15 U.S.C. 78f(b)(5).

maintenance of a fair and orderly market are present. In addition, investors will have ready access to information regarding the applicable IIV, and quotation and last sale information for the Shares.

All statements and representations made in this filing regarding the composition of the Underlying Indexes, the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of index, reference asset, and IIV, or the applicability of Exchange listing rules shall constitute continued listing requirements for listing the Shares on the Exchange. The issuer is required to advise the Exchange of any failure by a 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 a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Rule 14.12.

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 several new exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. The Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, investors will have ready access to information regarding the IIV and quotation and last sale information for the Shares.

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 facilitate the listing and trading of three additional exchange-traded products 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

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

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 [20] and Rule 19b–4(f)(6) thereunder.[21]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [22] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [23] 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 requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange asserts that the limited extent of the Funds' deviation from the generic listing standards' 90% Rule, combined with the Funds' holdings having a minimum outstanding face value that is 2.5 times larger than the threshold in the generic listing standards, sufficiently mitigates concerns related to manipulation. Further, according to the Exchange, waiver of the 30-day operative delay would facilitate the listing and trading of additional exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. For those reasons, the Exchange asserts that waiver of the operative delay would be consistent with the protection of investors and the public interest. The Commission believes that the proposal raises no new or substantive issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[24]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2019–035 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–2019–035. 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

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 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.

[22] 17 CFR 240.19b–4(f)(6).

[23] 17 CFR 240.19b–4(f)(6)(iii).

[24] 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).

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–2019–035 and should be submitted on or before June 4, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–09860 Filed 5–13–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85803; File No. SR–BOX–2019–16]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt BOX Rule 7620 (Accommodation Transactions) Establishing Cabinet Trading on the Exchange's Trading Floor

May 8, 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 April 25, 2019, BOX Exchange LLC (''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 from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish BOX Rule 7620 (Accommodation Transactions) which provides for cabinet trading on the Exchange's Trading Floor. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's internet website at *http://boxoptions.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to establish BOX Rule 7620 (Accommodation Transactions) which provides for cabinet trading [3] on the Exchange's Trading Floor. The Exchange notes that the proposed rule is substantially similar to a rule on another exchange.[4]

Proposed Rule 7620 defines the term ''cabinet order'' as a closing limit order at a price of $1 per option contract for the account of a customer or Floor Market Maker. Rule 7620 also states that an opening order is not a ''cabinet order'' but may in certain cases be matched with a cabinet order pursuant to subsection proposed Rule 7620(c) and (d). For purposes of this rule filing, the Exchange specifies that an ''opening order'' is a contra-side opening order in response to a Customer who submits a closing order to clear their position. The rule further states that only Floor Brokers may represent cabinet orders. Further, under proposed Rule 7620, cabinet trading shall be available for each series of options open for trading on the Exchange under the following terms and conditions (a) trading shall be conducted in accordance with other Exchange rules except as otherwise provided herein or unless the context otherwise requires; and (b) cabinet orders may be submitted to Floor Brokers. Floor Brokers must use the designated cabinet transaction forms provided by the Exchange to document receipt of a cabinet order and the execution of a cabinet transaction. Further, the proposed rule states that Rule 7580(e)(1) shall not apply to orders placed in the cabinet or executed in the cabinet.[5]

The Exchange also proposes to add Rule 7620(c), (d), and (e) which specifies the procedures to be followed by the Floor Broker and other trading crowd participants to execute cabinet orders in two different scenarios. In each case, the Floor Broker would be required to act in the presence of at least one Market Maker and Options Exchange Official.

Proposed Rule 7620(c) governs cases where a Floor Broker holds a cabinet order but does not also hold contra-side interest. In that case, the Floor Broker shall announce the terms of the cabinet order to the trading crowd to solicit interest to participate on the closing position. All matching cabinet orders shall be assigned priority based upon the sequence in which such orders are received by the Floor Broker. If there is no matching cabinet order, the Floor Broker may match the cabinet order with a matching opening buy or sell limit order priced at $1 per option contract. If there is no matching cabinet order or opening order, the Floor Broker may seek matching bids or offers for accounts of Floor Participants. Floor Participants can only participate after all other orders have been matched.

Rule 7620(d) governs cases where a Floor Broker holds a cabinet order and also a contra-side cabinet order. In that situation, the Floor Broker is required to announce the terms of the cabinet orders to the trading crowd. The cabinet orders shall then be immediately crossed by the Floor Broker.

Finally, proposed Rule 7620(e) applies where a Floor Broker holds both a cabinet order and a contra-side opening order. In that situation, the Floor Broker is required to announce the terms of the cabinet order to the trading crowd. If there is a matching cabinet order, the Floor Broker shall match the two cabinet orders. If there is no

[25] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] An ''accommodation'' or ''cabinet'' trade refers to trades in listed options on the Exchange that are worthless or not actively traded, often times conducted to establish tax losses. Cabinet or accommodation trading of option contracts is intended to accommodate persons wishing to effect closing transactions in those series of options dealt in on the Exchange for which there is no auction market. A cabinet trade is a transaction in which the per-contract value of the cabinet trade is less than the per-contract value of a trade at the specified minimum increment for the option contract.

[4] *See* Nasdaq Phlx Rule 1059 (allowing for accommodation trades).

[5] Rule 7580(e)(1) provides for the use on the trading floor of the Floor Broker's order entry mechanism to record all options orders represented by such Floor Broker.

matching cabinet order, the cabinet order shall then be immediately crossed by the Floor Broker with the opening order held by the Floor Broker.

The proposed priority rules focus on the cabinet order at the time it is represented by a Floor Broker in the trading crowd. Thus, as proposed, each Floor Broker holding a cabinet order only would be required to assign priority to cabinet orders he holds based upon the sequence in which he receives such orders, therefore, each Floor Broker would not be required to cede priority to a cabinet order represented in the crowd at an earlier time by another Floor Broker.

The Floor Broker is then to assign matching cabinet orders from the crowd based upon the sequence in which the orders are received by that floor broker representing such order. For example, the ''Floor Broker A'' receives a cabinet order to buy 500 contracts and represents to the trading crowd. At the time of representation to the crowd, ''Floor Broker B'' has a matching cabinet order for 250 contracts and ''Floor Broker C'' enters the trading crows after ''Floor Broker B'' with a matching cabinet order for 500 contracts. ''Floor Broker A'' then proceeds to match his 500 contracts to buy cabinet order with the matching cabinet order from ''Floor Broker B'' for 250 contracts and matching the balance of 250 contracts with ''Floor Broker C''. The Floor Broker matched the cabinet orders based on the sequence in which the orders were received in the crowd at the time the cabinet order was represented. If there are no matching cabinet orders from the crowd, the Floor Broker may match the cabinet order with a matching opening order from the crowd. If however the Floor Broker holds both a cabinet order and a contra side cabinet order, the Floor Broker would be required to immediately cross those orders after announcing their terms in the crowd, regardless of cabinet orders held by other Floor Brokers.

In addition, the Exchange proposes Rule 7620(f) which requires that, once the cabinet order has been either crossed or matched, the Floor Broker must submit the designated cabinet form as soon as possible to the Exchange's Market Operations staff for clearance and reporting. Finally, the Exchange proposes Rule 7620(g) which states that Floor Market Makers shall not be subject to the requirements of Rule 8510 in respect to orders placed pursuant to this proposed rule. Further, proposed Rule 7620(g) states that the provisions of Rule 7040(a) through (c), and Rule 7050 would not apply to orders placed in the cabinet.[6] The proposed rule is substantially similar to that of another Exchange because it will give market participants the ability to close out positions in which the value of the contract is less than the value of the contract at the minimum increment.[7]

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[8] in general, and Section 6(b)(5) of the Act,[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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 particular, by adopting the proposed cabinet rule above, the Exchange will provide the ability for market participants to close out positions in which the value of the contract is less than the value of the contract at the minimum increment. The proposed rule change will permit market participants to execute cabinet trades on the Exchange, even without the participation of Floor Market Makers. The proposed rule promotes just and equitable principles of trade by setting forth priority rules for trade executions, and by requiring use of Exchange designated cabinet transaction forms to record information and the submission of the forms to Market Operations Center staff for the clearance and reporting of the cabinet trades.

The proposed rule would give market participants' the ability to execute cabinet transactions on the Exchange's Trading Floor, in an open manner and in compliance with new procedures specified by this rule.

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. The proposed rule would apply to all Floor Brokers. In this regard and as indicated above, the Exchange notes that the proposed rule is substantially similar to Phlx rule that was approved by the Commission.[10]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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)(iii) of the Act[11] and subparagraph (f)(6) of Rule 19b–4 thereunder.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[6] Exchange Rule 8510 discusses the obligations and restrictions applicable to floor market makers. Exchange Rule 7040 sets out the meanings for premium quotes and orders, and Exchange Rule 7050 details minimum trading increments for options contracts traded on BOX.

[7] *See supra,* note 4. The Exchange's proposed rule differs in one material respect, by allowing the Market Operations Center staff to clear and report cabinet trades immediately rather than at the close of the business day.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *See supra,* note 4.

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[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.

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BOX–2019–16 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2019–16. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2019–16 and should be submitted on or before June 4, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–09869 Filed 5–13–19; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–85806; File No. SR–NASDAQ–2019–035]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Remove the Exchange's Current Primary Contingency Procedure From the Exchange's Rule Book

May 8, 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 April 26, 2019, The Nasdaq Stock Market LLC (''Nasdaq'' 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 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 remove the Exchange's current Primary Contingency Procedure from the Exchange's rule book and designate the Exchange's current Secondary Contingency Procedure as the default contingency procedure when a disruption occurs that prevents the execution of the closing cross for a security.

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

Nasdaq currently has two contingency plans for determining the Nasdaq Official Closing Price (''NOCP'') for a security in the event that Nasdaq experiences a system disruption that precludes normal execution of the Nasdaq closing cross pursuant to Rule 4754. In the event of such disruption, the President of Nasdaq or any Senior Executive designated by the President will be authorized to invoke either the Primary Contingency Procedures set forth in Rule 4754(b)(7) or the Secondary Contingency Procedures set forth in Rule 4754(b)(8) to determine the NOCP, which would be published to the Consolidated Quote/Consolidated Tape Plan (''SIPs''). Nasdaq will employ the Primary Contingency Procedures if at all possible, and it will employ the Secondary Contingency Procedures only if it determines that both the standard procedures and the Primary Contingency Procedures are unavailable.

Under the Primary Contingency Procedures, Nasdaq will employ an offline process using stored order files to determine the size and component executions for the closing cross trade in any and all affected securities on a security-by-security basis and manually deliver execution reports to members.[3] Currently, Nasdaq maintains a database of all closing cross orders entered into

[3] Currently, under Rule 4754(b)(7), when a disruption occurs that prevents the execution of the closing cross for any security, Nasdaq will identify the last regular way trade reported by the network processor prior to 4:00 p.m. and will publish that price as the NOCP. In the event an impacted security has no consolidated trading in that security for that day, Nasdaq will have no NOCP and no contingency cross for that security. Once Nasdaq has identified the NOCP for a given security, Nasdaq will operate a modified closing cross to determine the number of shares and the specific orders that can be executed at the NOCP. All Market-on-Close (''MOC'') orders entered prior to 3:55 p.m., Limit-on-Close (''LOC'') orders entered prior to 3:58 p.m., and Imbalance Only orders entered prior to 4:00 p.m. will be eligible to participate in the Contingency Closing Cross. Nasdaq will cross and execute eligible MOC and LOC orders in price-time priority. If an order imbalance exists in the MOC and LOC interest that is marketable at the NOCP, Nasdaq will include in the cross Imbalance Only orders on the side of the market with less trading interest in price/time priority, and then execute all MOC, LOC and Imbalance Only orders at the NOCP. Once Nasdaq has completed the Contingency Closing Cross, it will report the results to the appropriate network processor and deliver execution reports to members. After hours trading will begin either as scheduled at 4:00 p.m. or upon resolution of the disruption that triggered Nasdaq to operate the Contingency Closing Cross.

its execution system, as well as other data regarding order processing. The database is independent of and isolated from the execution system and network and, as a result, it can operate regardless of impairment to those systems. Nasdaq will operate the Primary Contingency Procedures from a server that is also independent of and isolated from the execution system and network, and that is supported by multiple redundant backups.

In the event that Nasdaq's market is impaired and unable to execute a closing auction for all or a subset of listed securities under the standard closing procedures and the Primary Contingency Procedures are unavailable, and Nasdaq determines to follow the Secondary Contingency Procedures at or before 3 p.m. EST, Nasdaq will designate a back-up exchange.[4] Currently, Nasdaq has designated NYSE Arca as its official back-up exchange.[5] If Nasdaq determines to follow the Secondary Contingency Procedures after 3 p.m., the Exchange would calculate the NOCP with a volume-weighted average price (''VWAP'') calculation.[6] Nasdaq would invoke the Secondary Contingency Procedures only after it determines that neither the standard closing procedures nor the Primary Contingency Procedures are available. Nasdaq is proposing to eliminate the Primary Contingency Procedures so that the Secondary Contingency Procedures will be the default contingency procedures.

Since June of 2002, Nasdaq has published contingency plans in the event the Nasdaq closing process was to be disrupted during the annual Russell US Index Reconstitution (''Russell Rebalance''). Nasdaq adopted the current Primary Contingency Procedures in 2013 in order to formally include the Exchange's contingency plans in its rule manual.[7] In response to evolving technology and industry practice, Nasdaq adopted the Secondary Contingency Procedures in 2016.[8] In conjunction with or shortly after Nasdaq's adoption of the Secondary Contingency procedures, NYSE,[9] NYSE American,[10] NYSE Arca,[11] and Cboe BZX Exchange, Inc. (''Cboe BZX'') [12] established contingency procedures materially similar to Nasdaq's Secondary Contingency Procedures.[13] However, no other national securities exchange has established contingency procedures similar to Nasdaq's Primary Contingency Procedures.[14] Further, the Primary Contingency Procedures have never been invoked by the Exchange. Nasdaq is proposing to eliminate the Primary Contingency Procedures so that the Secondary Contingency Procedures will be the default contingency procedure.

Nasdaq believes that removing the Primary Contingency Procedures and utilizing the Secondary Contingency Procedures in the event Nasdaq is unable to execute a closing cross would harmonize the Exchange's contingency procedures with those of other national securities exchanges, which would provide market participants with consistency and predictability in the event that an exchange is impaired and cannot conduct a closing auction. Furthermore, Nasdaq believes that the Secondary Contingency Procedures best preserves Nasdaq's ability to move quickly to establish a reliable closing price under unusual conditions, as compared to the Primary Contingency Procedures, which utilize an offline process that requires Nasdaq to determine the size and component executions for the closing cross on a security-by-security basis using stored order files and manually deliver execution reports to members. The Exchange believes that having robust, efficient contingency procedures is particularly important on high volume trading days, such as the Russell Rebalance, which occurs annually in June.[15]

In addition, Nasdaq proposes to delete text in Rule 4754(b)(7) describing the

[4] Currently, under Rule 4754(b)(8)(A), if Nasdaq determines to invoke the Secondary Contingency Procedures at or prior to 3:00 p.m. EST, the official closing price from Nasdaq's designated alternate exchange would serve as the NOCP or, if there is no official closing price on the designated alternate exchange, the NOCP would be the VWAP of the consolidated last-sale eligible prices for the last five minutes of trading during regular trading hours. If there were no consolidated last-sale eligible trades in the last five minutes of trading during regular trading hours, the NOCP would be the last consolidated last-sale eligible trade for such security during regular trading hours on that day or, if there was no last-sale eligible trade, the prior day's NOCP. If no NOCP can be calculated by any of the foregoing methods, the Exchange would not publish an official closing price for the security.

[5] *See* Securities Exchange Act Release No. 78014 (June 8, 2016), 81 FR 38755 (June 14, 2016) (SR–NASDAQ–2016–035) (''Notice of Filing of Amendment No. 1, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Establish Secondary Contingency Procedures for the Exchange's Closing Cross'').

[6] Currently, under Rule 4754(b)(8)(B), if Nasdaq determines to invoke the Secondary Contingency Procedures after 3:00 p.m. EST, the VWAP of the consolidated last-sale eligible prices for the last five minutes of trading during regular trading hours would serve as the NOCP. If there were no consolidated last-sale eligible trades in the last five minutes of trading during regular trading hours, the NOCP would be the last consolidated last-sale eligible trade for such security during regular trading hours on that day or, if there was no last-sale eligible trade, the prior day's NOCP. If no NOCP can be calculated by any of the foregoing methods, the Exchange would not publish an official closing price for the security.

[7] *See* Securities Exchange Act Release No. 69880 (June 27, 2013), 78 FR 40223 (July 3, 2013) (SR–NASDAQ–2013–090) (''Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Exchange Rule 4754 Governing the NASDAQ Closing Cross (''Cross'')'').

[8] *See supra,* note 5.

[9] *See* Securities Exchange Act Release No. 78015 (June 8, 2016), 81 FR 38747 (June 14, 2016) (SR–NYSE–2016–18) (''Notice of Filings of Amendment No. 1, and Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendment No. 1, To Provide for How the Exchanges Would Determine an Official Closing Price if the Exchanges Are Unable To Conduct a Closing Transaction'').

[10] *See* Securities Exchange Act Release No. 78015 (June 8, 2016), 81 FR 38747 (June 14, 2016) (SR–NYSEMKT–2016–31) (''Notice of Filings of Amendment No. 1, and Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendment No. 1, To Provide for How the Exchanges Would Determine an Official Closing Price if the Exchanges Are Unable To Conduct a Closing Transaction'').

[11] *See* Securities Exchange Act Release No. 78357 (July 19, 2016), 81 FR 48477 (July 25, 2016) (SR–NYSEArca–2016–94) (''Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rule 1.1 to Establish an Official Closing Price for Exchange-Listed Securities if the Exchange is Unable to Conduct a Closing Auction'').

[12] *See* Securities Exchange Act Release No. 78527 (August 10, 2016), 81 FR 54628 (August 16, 2016) (SR–BatsBZX–2016–47) (''Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish a Closing Contingency Procedure'').

[13] Investors Exchange LLC (''IEX'') has also adopted Secondary Closing Auction Contingency Procedures under Rule 11.350(d)(4)(B) that are similar to Nasdaq's Secondary Contingency Procedures.

[14] IEX has adopted Primary Closing Auction Contingency Procedures under Rule 11.350(d)(4)(A)(i). If IEX determines to initiate the Primary Closing Auction Contingency Procedures, IEX will publicly announce that no Closing Auction will occur. The price of the Final Consolidated Last Sale Eligible Trade will be used for the IEX Official Closing Price. The IEX Official Closing Price will be published to the Consolidated Tape. IEX will execute orders on the Closing Auction Book at the IEX Official Closing Price to the extent executable buy and sell interest exists on the Closing Auction Book. All remaining orders on the Order Book will be canceled at the conclusion of the contingency process. IEX will report the resulting execution to the Consolidated Tape and deliver execution reports to Users. If a security's IEX Official Closing Price cannot be determined by this subsection, IEX will not publish an IEX Official Closing Price for the security and will cancel all orders on the Order Book. The Post Market Session shall begin either as scheduled, or upon resolution of the disruption that triggered IEX to operate the Primary Contingency Procedures. In contrast, if Nasdaq determines to initiate the Primary Contingency Procedures, Nasdaq will identify the last consolidated regular way trade reported by the network processor prior to 4:00 p.m. and shall publish that price as the Nasdaq Official Closing Price for that security. Once Nasdaq has identified the NOCP for a given security, Nasdaq will operate a modified closing cross to determine the number of shares and the specific orders that can be executed at the NOCP. *See supra,* note 3.

[15] *See* FTSE Russell, ''Russell US Index Reconstitution'', available at: *https://www.ftserussell.com/index-series/index-resources/russell-reconstitution.*

information that the Exchange will use when determining whether to employ the Primary or Secondary Contingency Procedures because the Secondary Contingency Procedures will be the default contingency procedure under the proposed rule change. The Exchange also proposes to add ''VWAP'' as a defined term that was inadvertently omitted in the previous version of Rule 4754(b)(8)(A)(ii); update Rule 4754(b)(8)(B)(i) to include the new defined term ''VWAP''; and add an ''or'' that was inadvertently omitted in the previous version of Rule 4754(b)(8)(B)(ii) and Rule 4754(b)(8)(B)(iii). Lastly, the Exchange proposes renumbering the current Rule 4754(b)(8) as Rule 4754(b)(7) to maintain a clear and organized rule structure.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[16] in general, and furthers the objectives of Section 6(b)(5) of the Act,[17] in particular, in that it is designed 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 proposal is consistent with this provision of the Act in that it will ensure that the Exchange continues to operate a fair and orderly market and to provide for an effective pricing mechanism for the critical period of the market close in the event of a disruption where Nasdaq is unable to execute a closing cross in a way that is consistent with the contingency procedures utilized by other national securities exchanges, which helps ensure transparency, consistency and predictability for market participants. The Exchange believes that having robust contingency procedures is particularly important on high volume trading days, such as the Russell Rebalance, which occurs annually in June.

With respect to the Exchange's proposals to delete text in Rule 4754(b)(7) describing the information that the Exchange will use when determining whether to employ the Primary or Secondary Contingency Procedures; add ''VWAP'' as a defined term that was inadvertently omitted in the previous version of Rule 4754(b)(8)(A)(ii); update Rule 4754(b)(8)(B)(i) to include the new defined term ''VWAP''; and add an ''or'' that was inadvertently omitted in the previous version of Rule 4754(b)(8)(B)(ii) and Rule 4754(b)(8)(B)(iii), the Exchange believes that these changes are consistent with the Act because they will improve the readability and clarity of the Rule. These changes are not substantive. Lastly, the Exchange believes that its proposal to renumber the current Rule 4754(b)(8) as Rule 4754(b)(7) is consistent with the Act because it will allow the Exchange to maintain a clear and organized rule structure and prevent investor confusion.

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. The proposed rule change is not designed to address any competitive issues, but rather to provide for how the Exchange would determine the NOCP for Exchange-listed securities in the event that Nasdaq experiences a system disruption that precludes normal execution of the Nasdaq closing cross. This is designed to reduce the burden on competition by having similar back-up procedures across other primary listing exchanges [18] if such exchange is impaired and cannot conduct a closing auction. This proposal will maintain the Secondary Contingency Procedures, which were crafted with input from industry participants, the Exchange, and the SIPs, and remove the Primary Contingency Procedures, which are inconsistent with industry practices.

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

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 [19] and Rule 19b–4(f)(6) thereunder.[20]

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–NASDAQ–2019–035 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–2019–035. 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

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] NYSE, NYSE American, NYSE Arca and Cboe BZX have established contingency procedures materially similar to Nasdaq's Secondary Contingency Procedures and do not have primary contingency procedures. IEX has established a secondary contingency procedure similar to Nasdaq's and a primary contingency procedure that differs from Nasdaq's. *See supra,* notes 9 to 14.

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 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.

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–2019–035 and should be submitted on or beforeJune 4, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–09871 Filed 5–13–19; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15898 and #15899; IOWA Disaster Number IA–00086]

Presidential Declaration Amendment of a Major Disaster for the State of Iowa

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Iowa (FEMA–4421–DR), dated 03/23/2019.

Incident: Severe Storms and Flooding.

Incident Period: 03/12/2019 and continuing.

DATES: Issued on 05/07/2019.

Physical Loan Application Deadline Date: 07/01/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 12/23/2019.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Iowa, dated 03/23/2019, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Louisa

Contiguous Counties (Economic Injury Loans Only):

Iowa: Des Moines, Henry, Johnson, Muscatine, Washington.

Illinois: Henderson, Mercer, Rock Island.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2019–09890 Filed 5–13–19; 8:45 am]

BILLING CODE 8025–01–P

[21] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15946 and #15947; Sac & Fox Tribe of the Mississippi in Iowa Disaster Number IA–00088]

Presidential Declaration of a Major Disaster for Public Assistance Only for the Sac & Fox Tribe of the Mississippi in Iowa

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the Sac & Fox Tribe of the Mississippi in Iowa (FEMA–4430–DR), dated 04/29/2019.

Incident: Severe Storms and Flooding.

Incident Period: 03/13/2019 through 04/01/2019.

DATES: Issued on 04/29/2019.

Physical Loan Application Deadline Date: 06/28/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 01/29/2020.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 04/29/2019, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Area: Sac & Fox Tribe of the Mississippi in Iowa

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	2.750
Non-Profit Organizations Without Credit Available Elsewhere	2.750
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 159466 and for economic injury is 159470.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2019–09889 Filed 5–13–19; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15929 and #15930; Iowa Disaster Number IA–00087]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Iowa

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Iowa (FEMA–4421–DR), dated 04/05/2019.

Incident: Severe Storms and Flooding.

Incident Period: 03/12/2019 and continuing.

DATES: Issued on April 5, 2019.

Physical Loan Application Deadline Date: 06/04/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 01/06/2020.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration,

409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of IOWA, dated 04/05/2019, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Allamakee, Audubon, Bremer, Clay, Decatur, Hancock, Hardin, Howard, Humboldt, Iowa, Montgomery, Pocahontas, Sac

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2019–09876 Filed 5–13–19; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15935 and #15936; ALABAMA Disaster Number AL–00096]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Alabama

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Alabama (FEMA–4426–DR), dated 04/17/2019.

Incident: Severe Storms, Straight-Line Winds, Tornadoes, and Flooding.

Incident Period: 02/19/2019 through 03/20/2019.

DATES: Issued on 05/06/2019.

Physical Loan Application Deadline Date: 06/17/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 01/17/2020.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Alabama, dated 04/17/2019, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Blount, Greene.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2019–09888 Filed 5–13–19; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15927 and #15928; Nebraska Disaster Number NE–00074]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Nebraska

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Nebraska (FEMA–4420–DR), dated 04/05/2019.

Incident: Severe Winter Storm, Straight-line Winds, and Flooding.

Incident Period: 03/09/2019 through 04/01/2019.

DATES: Issued on April 5, 2019.

Physical Loan Application Deadline Date: 06/04/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 01/06/2020.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Nebraska, dated 04/05/2019, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Clay, Dawson, Kearney, Polk, Seward, York

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2019–09875 Filed 5–13–19; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15952 and #15953; Illinois Disaster Number IL–00053]

Administrative Declaration of a Disaster for the State of Illinois

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Illinois

Dated: 05/07/2019.

Incident: Severe Storms and Flooding.

Incident Period: 03/15/2019 through 03/23/2019.

DATES: Issued on 05/07/2019.

Physical Loan Application Deadline Date: 07/08/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 02/07/2020.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Stephenson

Contiguous Counties:

Illinois: Carroll, Jo Daviess, Ogle, Winnebago.

Wisconsin: Green, Lafayette.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	4.125
Homeowners without Credit Available Elsewhere	2.063
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	2.750
Non-Profit Organizations without Credit Available Elsewhere	2.750
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000

	Percent
Non-Profit Organizations without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 15952 6 and for economic injury is 15953 0.

The States which received an EIDL Declaration # are Illinois, Wisconsin.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: May 7, 2019.

Christopher M. Pilkerton,

Acting Administrator.

[FR Doc. 2019–09886 Filed 5–13–19; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #15954 and #15955; Alabama Disaster Number AL–00095]

Administrative Declaration of a Disaster for the State of Alabama

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Alabama.

Dated: 05/07/2019.

Incident: Severe Storms, Straight-line Winds, Tornadoes, and Flooding.

Incident Period: 02/19/2019 through 03/20/2019.

DATES: Issued on 05/07/2019.

Physical Loan Application Deadline Date: 07/08/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 02/07/2020.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Cherokee

Contiguous Counties:

Alabama: Calhoun, Cleburne, De Kalb, Etowah.

Georgia: Chattooga, Floyd, Polk.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	4.125
Homeowners without Credit Available Elsewhere	2.063
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	2.750
Non-Profit Organizations without Credit Available Elsewhere	2.750
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 15954 B and for economic injury is 15955 0.

The States which received an EIDL Declaration # are Alabama, Georgia.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: May 7, 2019.

Christopher M. Pilkerton,

Acting Administrator.

[FR Doc. 2019–09887 Filed 5–13–19; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Product Exclusions: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of product exclusions.

SUMMARY: Effective July 6, 2018, the U.S. Trade Representative (Trade Representative) imposed additional duties on goods of China with an annual trade value of approximately $34 billion (the $34 billion action) as part of the action in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation. The Trade Representative's determination included a decision to establish a product exclusion process. The Trade Representative initiated the exclusion process in July 2018, and stakeholders have submitted requests for the exclusion of specific products. The Trade Representative granted exclusion requests in December 2018, March 2019, and April 2019. This notice announces the Trade Representative's determination to grant additional exclusion requests, as specified in the Annex to this notice. The Trade Representative will continue to issue decisions on pending requests on a periodic basis.

DATES: The product exclusions announced in this notice will apply as of the July 6, 2018 effective date of the $34 billion action, and will extend for one year after the publication of this notice. U.S. Customs and Border Protection will issue instructions on entry guidance and implementation.

FOR FURTHER INFORMATION CONTACT: For general questions about this notice, contact Assistant General Counsels Philip Butler or Megan Grimball, or Director of Industrial Goods Justin Hoffmann at (202) 395–5725. For specific questions on customs classification or implementation of the product exclusions identified in the Annex to this notice, contact *traderemedy@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

For background on the proceedings in this investigation, please see the prior notices issued in the investigation, including 82 FR 40213 (August 24, 2017), 83 FR 14906 (April 6, 2018), 83 FR 28710 (June 20, 2018), 83 FR 33608 (July 17, 2018), 83 FR 38760 (August 7, 2018), 83 FR 40823 (August 16, 2018), 83 FR 47974 (September 21, 2018), 83 FR 65198 (December 19, 2018), 83 FR 67463 (December 28, 2018), 84 FR 7966 (March 5, 2019), 84 FR 11152 (March 25, 2019), and 84 FR 16310 (April 18, 2019).

Effective July 6, 2018, the Trade Representative imposed additional 25 percent duties on goods of China classified in 818 8-digit subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), with an approximate annual trade value of $34 billion. *See* 83 FR 28710. The Trade Representative's determination included a decision to establish a process by which U.S. stakeholders may request exclusion of particular products classified within an 8-digit HTSUS subheading covered by the $34 billion action from the additional duties. The Trade Representative issued a notice setting out the process for the product exclusions, and opened a public docket. *See* 83 FR 32181 (the July 11 notice).

Under the July 11 notice, requests for exclusion had to identify the product subject to the request in terms of the

physical characteristics that distinguish the product from other products within the relevant 8-digit subheading covered by the $34 billion action. Requestors also had to provide the 10-digit subheading of the HTSUS most applicable to the particular product requested for exclusion, and could submit information on the ability of U.S. Customs and Border Protection to administer the requested exclusion. Requestors were asked to provide the quantity and value of the Chinese-origin product that the requestor purchased in the last three years. With regard to the rationale for the requested exclusion, requests had to address the following factors:

- Whether the particular product is available only from China and specifically whether the particular product and/or a comparable product is available from sources in the United States and/or third countries.
- Whether the imposition of additional duties on the particular product would cause severe economic harm to the requestor or other U.S. interests.
- Whether the particular product is strategically important or related to ''Made in China 2025'' or other Chinese industrial programs.

The July 11 notice stated that the Trade Representative would take into account whether an exclusion would undermine the objective of the Section 301 investigation.

The July 11 notice required submission of requests for exclusion from the $34 billion action no later than October 9, 2018, and noted that the Trade Representative would periodically announce decisions. In December 2018, the Trade Representative granted an initial set of exclusion requests. *See* 83 FR 67463. The Trade Representative granted a second and third set of exclusions in March 2019 and April 2019. *See* 84 FR 11152 and 84 FR 16310. The Office of the United States Trade Representative regularly updates the status of each pending request at *https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-china/section-301-exclusion-process.*

B. Determination To Grant Certain Exclusions

Based on the evaluation of the factors set out in the July 11 notice, which are summarized above, pursuant to sections 301(b), 301(c), and 307(a) of the Trade Act of 1974, as amended, and in accordance with the advice of the interagency Section 301 Committee, the Trade Representative has determined to grant the product exclusions set out in the Annex to this notice. The Trade Representative's determination also takes into account advice from advisory committees and any public comments on the pertinent exclusion requests.

As set out in the Annex to this notice, the exclusions are established in two different formats: (1) As an exclusion for an existing 10-digit subheading from within an 8-digit subheading covered by the $34 billion action, or (2) as an exclusion reflected in specially prepared product descriptions. In particular, the exclusions take the form of five 10-digit HTSUS subheadings, and 35 specially prepared product descriptions.

In accordance with the July 11 notice, the exclusions are available for any product that meets the description in the Annex, regardless of whether the importer filed an exclusion request. Further, the scope of each exclusion is governed by the scope of the product descriptions in the Annex to this notice, and not by the product descriptions set out in any particular request for exclusion.

The exclusions in the Annex cover approximately 515 separate exclusion requests: the excluded 10-digit subheadings cover 86 separate requests, and the 35 specially prepared product descriptions cover approximately 429 separate requests.

Paragraph A, subparagraphs (3)–(5) are conforming amendments to the HTSUS reflecting the modification made by the Annex to this notice.

As stated in the July 11 notice, the exclusions will apply as of the July 6, 2018 effective date of the $34 billion action, and extend for one year after the publication of this notice. U.S. Customs and Border Protection will issue instructions on entry guidance and implementation.

The Trade Representative will continue to issue determinations on pending requests on a periodic basis.

Joseph Barloon,

General Counsel, Office of the U.S. Trade Representative.

ANNEX

A. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on July 6, 2018, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified:

1. By inserting the following new heading 9903.88.08 in numerical sequence, with the material in the new heading inserted in the columns of the HTSUS labeled ''Heading/Subheading'', ''Article Description'', and ''Rates of Duty 1-General'', respectively:

Heading/subheading	Article description	Rates of duty		
		1		2
		General	Special	
''9903.88.08	Articles the product of China, as provided for in U.S. note 20(k) to this subchapter, each covered by an exclusion granted by the U.S. Trade Representative.	The duty provided in the applicable subheading.''		

2. by inserting the following new U.S. note 20(k) to subchapter III of chapter 99 in numerical sequence:

''(k) The U.S. Trade Representative determined to establish a process by which particular products classified in heading 9903.88.01 and provided for in U.S. notes 20(a) and 20(b) to this subchapter could be excluded from the additional duties imposed by heading 9903.88.01. See 83 FR 28710 (June 20, 2018) and 83 FR 32181 (July 11, 2018). Pursuant to the product exclusion process, the U.S. Trade Representative has determined that the additional duties provided for in heading 9903.88.01 shall not apply to the following particular products, which are provided for in the enumerated statistical reporting numbers:

(1) 8407.21.0040
(2) 8427.10.4000
(3) 8473.40.1000
(4) 8481.10.0090
(5) 8483.50.9040
(6) Apparatus, including pitchers, bottles, and units designed for incorporation into refrigerators, appliances or sink faucets, the foregoing fitted with filters for filtering or purifying water (described in statistical reporting number 8421.21.0000)
(7) Filtering apparatus, fitted with pumps, designed for use in pools, spas or similar contained bodies of water (described in statistical reporting number

8421.21.0000)
(8) Filtering or purifying machinery or apparatus of a kind used for waste water treatment (described in statistical reporting number 8421.21.0000)
(9) Submersible machinery for filtering water, designed for use in pools, basins, aquariums, spas or similar contained bodies of water (described in statistical reporting number 8421.21.0000)
(10) Water distillation machinery and apparatus not covered by heading 8419 (described in statistical reporting number 8421.21.0000)
(11) Air purification equipment, electrically powered, weighing less than 36 kg (described in statistical reporting number 8421.39.8015)
(12) Dust collection equipment for cement, minerals and mining industries (described in statistical reporting number 8421.39.8015)
(13) Apron-type chain conveyor (described in statistical reporting number 8428.39.0000)
(14) Roller conveyors (described in statistical reporting number 8428.39.0000)
(15) Vibrating conveyors (described in statistical reporting number 8428.39.0000)
(16) Machinery for mixing beverages in single servings for direct human consumption, designed for use in commercial food service establishments (described in statistical reporting number 8438.80.0000)
(17) Machinery for reconstituting single serving beverages for direct human consumption from frozen pre-packaged portions, designed for use in commercial food service establishments (described in statistical reporting number 8438.80.0000)
(18) Armatures designed for use in hydraulic solenoid valves (described in statistical reporting number 8481.90.9040)
(19) C-poles, of steel, designed for use in hydraulic solenoid control valves (described in statistical reporting number 8481.90.9040)
(20) Housings designed for hydraulic ball valves, of cast iron or steel, each measuring 5.7 cm by 3.2 cm and weighing 0.528 kg (described in statistical reporting number 8481.90.9040)
(21) Metering spools, of aluminum, designed for use in hydraulic solenoid control valves (described in statistical reporting number 8481.90.9040)
(22) Metering spools, of steel, designed for use in hydraulic solenoid control valves (described in statistical reporting number 8481.90.9040)
(23) Poles, of steel, designed for use in hydraulic solenoid control valves (described in statistical reporting number 8481.90.9040)
(24) Push pins, of steel, designed for use in hydraulic solenoid control valves (described in statistical reporting number 8481.90.9040)
(25) Retainers, of steel, designed for use in hydraulic solenoid control valves (described in statistical reporting number 8481.90.9040)
(26) DC electric motors, of an output of less than 18.65 W, valued over $4, other than brushless (described in statistical reporting number 8501.10.4060)
(27) AC electric motors, multi-phase, of an output exceeding 14.92 kW but not exceeding 75 kW, other than for use in civil aircraft (described in statistical reporting number 8501.52.8040)
(28) Coils, coil assemblies and other parts of electromagnets (the foregoing described in statistical reporting number 8505.90.7501)
(29) Radio remote control apparatus for garage doors (described in statistical reporting number 8526.92.5000)
(30) Radio remote control apparatus for pet collars and pet food dispensers (described in statistical reporting number 8526.92.5000)
(31) Remote control devices, hand held and battery powered, designed for use with toy model vehicles and aircraft (described in statistical reporting number 8526.92.5000)
(32) Bezels, covers and housings, the foregoing designed for motor vehicle cameras (described in statistical reporting number 8529.90.8100)
(33) Electromechanical relays, for a voltage exceeding 60 V but not over 250 V, with contacts rated at 10 A or more (described in statistical reporting number 8536.49.0075)
(34) Push-button switches, rated at over 5 A, measuring no more than 2.9 cm by 2.9 cm by 2.9 cm, with 4 spade or brass terminals, with an actuator shaft with D-shaped cross section (described in statistical reporting number 8536.50.9035)
(35) Push-button switches, rated at over 5 A, measuring no more than 4.8 cm by 2.8 cm by 2.8 cm, with 2 spade or brass terminals (described in statistical reporting number 8536.50.9035)
(36) Push-button switches, rated at over 5 A, measuring no more than 5 cm by 1.7 cm by 1.9 cm, with 2 spade or brass terminals, with an actuator shaft with D-shaped cross section (described in statistical reporting number 8536.50.9035)
(37) Snap-action switches, each designed for installation in a wall-mounted enclosure or electrical box (described in statistical reporting number 8536.50.9040)
(38) Stereoscopic microscopes, not provided with a means for photographing the image, valued not over $500 per unit (described in statistical reporting number 9011.10.8000)
(39) Adapter rings, tubes and extension sleeves, stands and arm assemblies, stages and gliding tables, eyeguards and focusing racks, all the foregoing designed for use with compound optical microscopes (described in statistical reporting number 9011.90.0000)
(40) Ultraviolet or infrared LED light therapy devices for the professional treatment of pain or of ailments of the skin (described in statistical reporting number 9018.20.0040)

3. by amending the last sentence of the first paragraph of U.S. note 20(a) to subchapter III of chapter 99 by:

a. Deleting the word ''or'' where it appears after the phrase ''U.S. note 20(i) to subchapter III of chapter 99;''; and

b. inserting ''; or (4) heading 9903.88.08 and U.S. note 20(k) to subchapter III of chapter 99'' after the phrase ''U.S. note 20(j) to subchapter III of chapter 99'', where it appears at the end of the sentence.

4. by amending the first sentence of U.S. note 20(b) to subchapter III of chapter 99 by:

a. Deleting the word ''or'' where it appears after the phrase ''U.S. note 20(i) to subchapter III of chapter 99;''; and

b. inserting ''; or (4) heading 9903.88.08 and U.S. note 20(k) to subchapter III of chapter 99'' after the phrase ''U.S. note 20(j) to subchapter III of chapter 99'', where it appears at the end of the sentence.

5. By amending the Article Description of heading 9903.88.01:

a. By deleting ''9903.88.06 or'';

b. by inserting in lieu thereof ''9903.88.06, ''; and

c. By inserting ''or 9903.88.08,'' after ''9903.88.07,''.

[FR Doc. 2019–09872 Filed 5–13–19; 8:45 am]

BILLING CODE 3290–F9–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 2120–0597]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Application for Employment With the Federal Aviation Administration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The collection involves an automated application process for employment with the Federal Aviation Administration. Applicants access an online form that is presented with requests for certain information.

The information collected is necessary to determine basic eligibility for employment and potential eligibility for Veteran's Preference, Veteran's Readjustment Act, and People with Disability appointments. In addition, there are specific occupation questions that assist the FAA Office of Human Resource Management (AHR) in determining candidates' qualifications in order that the best-qualified candidates are hired for the many FAA occupations.

DATES: Written comments should be submitted by June 19, 2019.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (2120–0597).

By mail: Toni Main-Valentin, FAA Mike Monroney Aeronautical Center, Office of Human Resource Management, PO Box 25082, Headquarters Bldg 1, Oklahoma City, OK 73125.

By fax: 405–954–5766.

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.

FOR FURTHER INFORMATION CONTACT: Toni Main-Valentin by email at: *toni.main-valentin@faa.gov;* phone: 405–954–0870.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–5097.

Title: Application for Employment with the Federal Aviation Administration.

Form Numbers: OMB Control Number: 2120–5097.

Type of Review: Renewal of an information collection.

Background: Under the provisions of Public Law 104–50, the Federal Aviation Administration (FAA) was given the authority and the responsibility for developing and implementing its own personnel system without regard to most of the provisions of Title 5, United States Code, exceptions being those concerning veteran's preference and various benefits.

The OPM developed a suite of forms for use in automated employment processes: all under a single OMB approval. The FAA AHR has the same OMB approval for its automated application for employment. By automating processes for employment application and the evaluation of candidates, AHR has markedly improved the service it provides to the public as well as its ability to locate and hire the best-qualified applicants. Lastly, via this process, applicants are provided on-line results immediately upon submitting their application questionnaires.

The Agency is requesting certain information necessary to determine basic eligibility for employment and potential eligibility for Veteran's Preference, Veteran's Readjustment Act, and People with Disability appointments. In addition, occupation specific questions assist AHR in determining candidates' qualifications in order that the best-qualified candidates are hired for the many FAA occupations. The system currently in use for this collection is the Automated Vacancy Information Access Tool for Online Referral (AVIATOR). This system cannot be directly accessed. Applicants are transferred to the AVIATOR system from OPM's USAJOBS website during the application process.

Respondents: All US citizens.

Frequency: 24 hours, 7 days per week.

Estimated Average Burden per Response: 1 hour.

Estimated Total Annual Burden: 180,000 hours.

Approximately 180,000 respondents will complete an application form on an annual basis. Based on this sample size, it will take the average applicant approximately 1 hour to read the instructions and complete the form. The estimated total burden is 180,000 hours annually.

Issued in Washington, DC, on April 19, 2019.

Alpha Woodson-Smith,

Information Technology Project Manager, Finance and Management (AFN), Information and Technology Services (AIT), Enterprise Program Management Service (AEM–320).

[FR Doc. 2019–09845 Filed 5–13–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2018–0137]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 30 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. The exemptions enable these hard of hearing and deaf individuals to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on March 22, 2019. The exemptions expire on March 22, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMCSA–2018–0137 in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On February 21, 2019, FMCSA published a notice announcing receipt of applications from 30 individuals requesting an exemption from the hearing requirement in 49 CFR 391.41(b)(11) to operate a CMV in interstate commerce and requested comments from the public (84 FR 5544). The public comment period ended on March 25, 2019, and one comment was received.

FMCSA has evaluated the eligibility of these applicants and determined that granting exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(11).

The physical qualification standard for drivers regarding hearing found in 49 CFR 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

49 CFR 391.41(b)(11) was adopted in 1970, with a revision in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

III. Discussion of Comments

FMCSA received one comment in this proceeding. Vincent Rangel noted that he is in agreement with granting exemptions to hearing impaired individuals. However, he feels the exemption should be tightly monitored to ensure that the safety of the public is not threatened. FMCSA agrees with this commenter and, as noted below, reviewed each individual's driving record to determine whether granting an exemption would pose a risk to public safety.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption for up to five years from the hearing standard in 49 CFR 391.41(b)(11) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce. FMCSA grants exemptions from the FMCSRs for a two-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on current medical information and literature, and the 2008 Evidence Report, ''Executive Summary on Hearing, Vestibular Function and Commercial Motor Driving Safety.'' The evidence report reached two conclusions regarding the matter of hearing loss and CMV driver safety: (1) No studies that examined the relationship between hearing loss and crash risk exclusively among CMV drivers were identified; and (2) evidence from studies of the private driver's license holder population does not support the contention that individuals with hearing impairment are at an increased risk for a crash. In addition, the Agency reviewed each applicant's driving record found in the Commercial Driver's License Information System (CDLIS), for commercial driver's license (CDL) holders, and inspections recorded in the Motor Carrier Management Information System (MCMIS). For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency (SDLA). Each applicant's record demonstrated a safe driving history. Based on an individual assessment of each applicant that focused on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce, the Agency believes the drivers granted this exemption have demonstrated that they do not pose a risk to public safety.

Consequently, FMCSA finds that in each case exempting these applicants from the hearing standard in 49 CFR 391.41(b)(11) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) Each driver must report any crashes or accidents as defined in 49 CFR 390.5; (2) each driver must report all citations and convictions for disqualifying offenses under 49 CFR part 383 and 49 CFR 391 to FMCSA; and (3) each driver is prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 30 exemption applications, FMCSA exempts the following drivers from the hearing standard, 49 CFR 391.41(b)(11), subject to the requirements cited above:

Maurice N. Abenchuchan (FL)
Gary Abendroth (WI)
Ronnie R. Adkins, (MO)
Brigit Anne Alm (WI)
Prince K. Bempong (TX)
Kenneth Blodeau (TX)
William B. Britt (TN)
James A. Bryan (AR)
Shawn R. Carico (TN)
Gillia J. Cobb (CA)
Perry Lynn Cobb (TN)
George P. Cuadera (MD)
Donte Darrington (MO)
Kevin A. Dent (MS)
Thomas Garro (AZ)
John L. Gonzagowski (MO)
Marc Graham (CA)
Jacob D. Hamilton (CA)
Robert R. Hefner (SC)
Dwayne Johnson (IL)
Marina S. Hernandez (NJ)
Patrick L. Johnson (MI)
Justin Kilgore (IA)
Lawrence Hung K. Lam (CA)
John N. McKee (IA)
John Rhoades (ID)
Darryl Rutland, (CA)
Phillip Shook Jr (MS)
Shana Williamson (TX)
Carl E. Wood (LA)

In accordance with 49 U.S.C. 31315, each exemption will be valid for two years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: May 8, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–09936 Filed 5–13–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0005]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 13 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate

commerce. They are unable to meet the vision requirement in one eye for various reasons. The exemptions enable these individuals to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

DATES: The exemptions were applicable on April 20, 2019. The exemptions expire on April 20, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the 2019–0005, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On March 20, 2019, FMCSA published a notice announcing receipt of applications from 13 individuals requesting an exemption from vision requirement in 49 CFR 391.41(b)(10) and requested comments from the public (84 FR 10389). The public comment period ended on April 19, 2019, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(10).

The physical qualification standard for drivers regarding vision found in 49 CFR 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for up to five years from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows applicants to operate CMVs in interstate commerce. FMCSA grants exemptions from the FMCSRs for a two-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on medical reports about the applicants' vision, as well as their driving records and experience driving with the vision deficiency. The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the March 20, 2019, **Federal Register** notice (84 FR 10389) and will not be repeated in this notice.

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their limitation and demonstrated their ability to drive safely. The 13 exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including amblyopia, aphakia, band keratopathy, cataract, corneal opacity, macular atrophy, macular scar, prosthesis, retinal detachment, and retinal dystrophy. In most cases, their eye conditions were not recently developed. Eight of the applicants were either born with their vision impairments or have had them since childhood. The five individuals that sustained their vision conditions as adults have had it for a range of 6 to 31 years. Although each applicant has one eye that does not meet the vision requirement in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and, in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV.

Doctors' opinions are supported by the applicants' possession of a valid license to operate a CMV. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV with their limited vision in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions.

The applicants in this notice have driven CMVs with their limited vision in careers ranging for 6 to 78 years. In the past three years, no drivers were involved in crashes, and no drivers were convicted of moving violations in CMVs. All the applicants achieved a record of safety while driving with their vision impairment that demonstrates the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

Consequently, FMCSA finds that in each case exempting these applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) Each driver must be physically examined every year (a) by an ophthalmologist or

optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10) and (b) by a certified Medical Examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) each driver must provide a copy of the ophthalmologist's or optometrist's report to the Medical Examiner at the time of the annual medical examination; and (3) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 13 exemption applications, FMCSA exempts the following drivers from the vision requirement, 49 CFR 391.41(b)(10), subject to the requirements cited above:

Maximo Fernandez (TX)
Michael W. Ireland (MA)
Thomas J. Johnston, Jr. (TX)
Keith A. Larson (MA)
Scott A. MacPherson (MA)
Brandon L. Mask (AR)
Christopher W. Proeschel (OH)
Michael Renzetti (CT)
Cory W. Schell (WA)
Rodney A. Stahl (MN)
Alvin J. Urke (CA)
David Wiebe (TX)
Robert L. Williams, Jr. (MS)

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for two years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: May 8, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–09940 Filed 5–13–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2018–0138]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from 27 individuals for an exemption from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions would enable these hard of hearing and deaf individuals to operate CMVs in interstate commerce.

DATES: Comments must be received on or before June 13, 2019.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2018–0138 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2018–0138), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* put the docket number, FMCSA–2018–0138, in the keyword box, and click ''Search.'' When the new screen appears, click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMCSA–2018–0138, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information

the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the FMCSRs for a five-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the five-year period. FMCSA grants exemptions from the FMCSRs for a two-year period to align with the maximum duration of a driver's medical certification.

The 27 individuals listed in this notice have requested an exemption from the hearing requirement in 49 CFR 391.41(b)(11). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding hearing found in 49 CFR 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

On February 1, 2013, FMCSA announced in a Notice of Final Disposition titled, Qualification of Drivers; Application for Exemptions; National Association of the Deaf, (78 FR 7479), its decision to grant requests from 40 individuals for exemptions from the Agency's physical qualification standard concerning hearing for interstate CMV drivers. Since the February 1, 2013 notice, the Agency has published additional notices granting requests from hard of hearing and deaf individuals for exemptions from the Agency's physical qualification standard concerning hearing for interstate CMV drivers.

III. Qualifications of Applicants

Selwyn Abrahamson

Mr. Abrahamson, age 30, holds an operator's license in Minnesota.

Oluwatobim Akinsanya

Mr. Akinsanya, age 37, holds an operator's license in New Jersey.

Denis J. Ayers

Mr. Ayers, age 40, holds an operator's license in Maryland.

Cesare Belardi

Mr. Belardi, age 44, holds an operator's license in Pennsylvania.

Robert M. Benner

Mr. Benner, age 44, holds a class A CDL in Ohio.

Jubal Carnley

Mr. Carnley, age 33, holds an operator's license in Florida.

Jason M. Clark

Mr. Clark, age 34, holds a class A operator's license in Missouri.

Erik De Leon

Mr. De Leon, age 26, holds an operator;s license in Texas.

Kareem M. Douglas

Mr. Douglas, age 45, holds an operator's license in Ohio.

Jacob Gadreault

Mr. Gadreault, age 26, holds a class A CDL in Massachusetts.

Boris D. Garth

Mr. Garth, age 52, holds an operator's license in Alabama.

Lane Grover

Mr. Grover, age 47, holds an operator's license in Indiana.

Michael S. Haywood

Mr. Haywood, age 27, holds an operator's license in Texas.

David J. Kakubowski

Mr. Jabubowski, age 63, holds an operator's license in California.

Scott W. Lufkin

Mr. Lufkin, age 41, holds an operator's license in North Carolina.

Billie Jo Martinez

Mr. Martinez, age 39, holds an operaator's license in Texas.

Steve Martinez

Mr. Martinez, age 54, holds an operator's license in Colorado.

Sergio Miramontes

Mr. Miramontes, age 46, holds an operator's license in California.

Jonathan A. Muhm

Mr. Muhm, age 39, holds a class A CDL in California.

Karl Ortiz

Mr. Ortiz, age 41, holds an operator's license in Missouri.

Andreas Shije

Mr. Shije, age 28, holds an operator's license in New Mexico.

Mildred A. Smith

Mr. Smith, age 51, holds an operator's license in Arkansas.

Joseph Strassberg

Mr. Strassburg, age 31, holds an operator's license in South Dakota.

James Thomason

Mr. Thomason, age 37, holds an operator's license in Missouri.

Gerld Wager, Jr.

Mr. Wager, age 41, holds an operator's license in North Carolina.

Jeremy A. Williamson Sr.

Mr. Williamson, age 43, holds an operator's license in California.

Matthew Whitehouse

Mr. Whitehouse, age 30, holds an operator's license in Washington.

IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the dates section of the notice.

Issued on: May 8, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–09941 Filed 5–13–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1998–4334; FMCSA–1999–5748; FMCSA–2000–7006; FMCSA–2000–7363; FMCSA–2000–7918; FMCSA–2000–8398; FMCSA–2001–9258; FMCSA–2002–12844; FMCSA–2003–14223; FMCSA–2003–14504; FMCSA–2004–17984; FMCSA–2004–18885; FMCSA–2004–19477; FMCSA–2005–20027; FMCSA–2005–20560; FMCSA–2006–24783; FMCSA–2006–25246; FMCSA–2006–26066; FMCSA–2007–27333; FMCSA–2007–27515; FMCSA–2008–0106; FMCSA–2008–0398; FMCSA–2009–0054; FMCSA–2009–0086; FMCSA–2010–0082; FMCSA–2010–0385; FMCSA–2011–0010; FMCSA–2011–0024; FMCSA–2011–0092; FMCSA–2011–0142; FMCSA–2012–0104; FMCSA–2012–0215; FMCSA–2012–0280; FMCSA–2012–0337; FMCSA–2012–0338; FMCSA–2013–0022; FMCSA–2013–0024; FMCSA–2013–0025; FMCSA–2013–0026; FMCSA–2014–0006; FMCSA–2014–0296; FMCSA–2014–0298; FMCSA–2014–0300; FMCSA–2014–0302; FMCSA–2014–0304; FMCSA–2014–0305; FMCSA–2015–0048; FMCSA–2016–0028; FMCSA–2016–0206; FMCSA–2016–0209; FMCSA–2016–0210; FMCSA–2016–0213; FMCSA–2016–0377; FMCSA–2017–0014; FMCSA–2017–0016; FMCSA–2017–0017; FMCSA–2017–0018]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew exemptions for 173 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these individuals to continue to operate CMVs in interstate commerce without meeting the vision requirements in one eye.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates stated in the discussions below. Comments must be received on or before June 13, 2019.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–1998–4334; FMCSA–1999–5748; FMCSA–2000–7006; FMCSA–2000–7363; FMCSA–2000–7918; FMCSA–2000–8398; FMCSA–2001–9258; FMCSA–2002–12844; FMCSA–2003–14223; FMCSA–2003–14504; FMCSA–2004–17984; FMCSA–2004–18885; FMCSA–2004–19477; FMCSA–2005–20027; FMCSA–2005–20560; FMCSA–2006–24783; FMCSA–2006–25246; FMCSA–2006–26066; FMCSA–2007–27333; FMCSA–2007–27515; FMCSA–2008–0106; FMCSA–2008–0398; FMCSA–2009–0054; FMCSA–2009–0086; FMCSA–2010–0082; FMCSA–2010–0385; FMCSA–2011–0010; FMCSA–2011–0024; FMCSA–2011–0092; FMCSA–2011–0142; FMCSA–2012–0104; FMCSA–2012–0215; FMCSA–2012–0280; FMCSA–2012–0337; FMCSA–2012–0338; FMCSA–2013–0022; FMCSA–2013–0024; FMCSA–2013–0025; FMCSA–2013–0026; FMCSA–2014–0006; FMCSA–2014–0296; FMCSA–2014–0298; FMCSA–2014–0300; FMCSA–2014–0302; FMCSA–2014–0304; FMCSA–2014–0305; FMCSA–2015–0048; FMCSA–2016–0028; FMCSA–2016–0206; FMCSA–2016–0209; FMCSA–2016–0210; FMCSA–2016–0213; FMCSA–2016–0377; FMCSA–2017–0014; FMCSA–2017–0016; FMCSA–2017–0017; FMCSA–2017–0018 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
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- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

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FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–1998–4334; FMCSA–1999–5748; FMCSA–2000–7006; FMCSA–2000–7363; FMCSA–2000–7918; FMCSA–2000–8398; FMCSA–2001–9258; FMCSA–2002–12844; FMCSA–2003–14223; FMCSA–2003–14504; FMCSA–2004–17984; FMCSA–2004–18885; FMCSA–2004–19477; FMCSA–2005–20027; FMCSA–2005–20560; FMCSA–2006–24783; FMCSA–2006–25246; FMCSA–2006–26066; FMCSA–2007–27333; FMCSA–2007–27515; FMCSA–2008–0106; FMCSA–2008–0398; FMCSA–2009–0054; FMCSA–2009–0086; FMCSA–2010–0082; FMCSA–2010–0385; FMCSA–2011–0010; FMCSA–2011–0024; FMCSA–2011–0092; FMCSA–2011–0142; FMCSA–2012–0104; FMCSA–2012–0215; FMCSA–2012–0280; FMCSA–2012–0337; FMCSA–2012–0338; FMCSA–2013–0022; FMCSA–2013–0024; FMCSA–2013–0025; FMCSA–2013–0026; FMCSA–2014–0006; FMCSA–2014–0296; FMCSA–2014–0298; FMCSA–2014–0300; FMCSA–2014–0302; FMCSA–2014–0304; FMCSA–2014–0305; FMCSA–2015–0048; FMCSA–2016–0028; FMCSA–2016–0206; FMCSA–2016–0209; FMCSA–2016–0210; FMCSA–2016–0213; FMCSA–2016–0377; FMCSA–2017–0014; FMCSA–2017–0016; FMCSA–2017–0017; FMCSA–2017–0018), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* put the docket number, FMCSA–1998–4334; FMCSA–1999–5748; FMCSA–2000–7006; FMCSA–2000–7363; FMCSA–2000–7918; FMCSA–2000–8398; FMCSA–2001–9258; FMCSA–2002–12844; FMCSA–2003–14223; FMCSA–2003–14504; FMCSA–2004–17984; FMCSA–2004–18885; FMCSA–2004–19477; FMCSA–2005–20027; FMCSA–2005–20560; FMCSA–2006–24783; FMCSA–2006–25246; FMCSA–2006–26066; FMCSA–2007–27333; FMCSA–2007–27515; FMCSA–2008–0106; FMCSA–2008–0398; FMCSA–2009–0054; FMCSA–2009–0086; FMCSA–2010–0082; FMCSA–2010–0385; FMCSA–2011–0010; FMCSA–2011–0024; FMCSA–2011–0092; FMCSA–2011–0142; FMCSA–2012–0104; FMCSA–2012–0215; FMCSA–2012–

0280; FMCSA–2012–0337; FMCSA–2012–0338; FMCSA–2013–0022; FMCSA–2013–0024; FMCSA–2013–0025; FMCSA–2013–0026; FMCSA–2014–0006; FMCSA–2014–0296; FMCSA–2014–0298; FMCSA–2014–0300; FMCSA–2014–0302; FMCSA–2014–0304; FMCSA–2014–0305; FMCSA–2015–0048; FMCSA–2016–0028; FMCSA–2016–0206; FMCSA–2016–0209; FMCSA–2016–0210; FMCSA–2016–0213; FMCSA–2016–0377; FMCSA–2017–0014; FMCSA–2017–0016; FMCSA–2017–0017; FMCSA–2017–0018, in the keyword box, and click ''Search.'' When the new screen appears, click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Documents and Comments

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C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for five years if it finds that such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the five-year period. FMCSA grants exemptions from the FMCSRs for a two-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding vision found in 49 CFR 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

The 173 individuals listed in this notice have requested renewal of their exemptions from the vision standard in 49 CFR 391.41(b)(10), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable two-year period.

III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

IV. Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than five years from its approval date and may be renewed upon application. FMCSA grants exemptions from the vision standard for a two-year period to align with the maximum duration of a driver's medical certification. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 173 applicants has satisfied the renewal conditions for obtaining an exemption from the vision standard (see 63 FR 66226; 64 FR 16517; 64 FR 40404; 64 FR 66962; 65 FR 20245; 65 FR 45817; 65 FR 57230; 65 FR 66286; 65 FR 77066; 65 FR 78256; 66 FR 13825; 66 FR 16311; 66 FR 17743; 66 FR 17994; 66 FR 33990; 67 FR 10475; 67 FR 57266; 67 FR 68719; 68 FR 2629; 68 FR 10301; 68 FR 13360; 68 FR 19596; 68 FR 19598; 68 FR 33570; 68 FR 35772; 69 FR 26206; 69 FR 33997; 69 FR 53493; 69 FR 61292; 69 FR 62742; 69 FR 64806; 69 FR 71100; 70 FR 2701; 70 FR 2705; 70 FR 12265; 70 FR 16886; 70 FR 16887; 70 FR 17504; 70 FR 25878; 70 FR 30997; 70 FR 33937; 71 FR 26602; 71 FR 32183; 71 FR 41310; 71 FR 62148; 71 FR 63379; 72 FR 180; 72 FR 184; 72 FR 1050; 72 FR 1051; 72 FR 1053; 72 FR 1056; 72 FR 9397; 72 FR 11425; 72 FR 11426; 72 FR 12666; 72 FR 18726; 72 FR 21313; 72 FR 25831; 72 FR 27624; 72 FR 28093; 72 FR 32703; 72 FR 32705; 72 FR 34062; 73 FR 27017; 73 FR 35194; 73 FR 35197; 73 FR 35199; 73 FR 36955; 73 FR 48273; 73 FR 48275; 73 FR 61925; 73 FR 76439; 73 FR 76440; 73 FR 78423; 74 FR 6211; 74 FR 7097; 74 FR 8302; 74 FR 8842; 74 FR 11988; 74 FR 11991; 74 FR 15584; 74 FR 15586; 74 FR 19267; 74 FR 19270; 74 FR 20253; 74 FR 21427; 74 FR 23472; 74 FR 26464; 74 FR 26471; 74 FR 28094; 75 FR 25917; 75 FR 27621; 75 FR 36778; 75 FR 39727; 75 FR 52062; 75 FR 59327; 75 FR 72868; 75 FR 77492; 75 FR 77942; 75 FR 79083; 75 FR 79084; 75 FR 80887; 76 FR 5425; 76 FR 9856; 76 FR 9865; 76 FR 11215; 76 FR 12216; 76 FR 15361; 76 FR 17481; 76 FR

17483; 76 FR 20076; 76 FR 21796; 76 FR 25762; 76 FR 25766; 76 FR 28125; 76 FR 29026; 76 FR 32016; 76 FR 32017; 76 FR 34133; 76 FR 34135; 76 FR 37885; 76 FR 49528; 76 FR 61143; 77 FR 27847; 77 FR 38386; 77 FR 48590; 77 FR 52381; 77 FR 52388; 77 FR 52389; 77 FR 64839; 77 FR 64841; 77 FR 68202; 77 FR 70534; 77 FR 74731; 77 FR 74734; 77 FR 75494; 77 FR 75496; 77 FR 76167; 78 FR 800; 78 FR 9772; 78 FR 10250; 78 FR 11731; 78 FR 12811; 78 FR 12815; 78 FR 12822; 78 FR 14410; 78 FR 16761; 78 FR 16762; 78 FR 16912; 78 FR 18667; 78 FR 20376; 78 FR 22596; 78 FR 22598; 78 FR 22602; 78 FR 24300; 78 FR 26106; 78 FR 29431; 78 FR 30954; 78 FR 32703; 78 FR 32708; 78 FR 34140; 78 FR 34141; 78 FR 37270; 78 FR 37274; 78 FR 57677; 78 FR 67460; 79 FR 29495; 79 FR 35212; 79 FR 47175; 79 FR 51642; 79 FR 58856; 79 FR 59348; 79 FR 59357; 79 FR 65759; 79 FR 65760; 79 FR 69985; 79 FR 72754; 79 FR 74168; 79 FR 74169; 80 FR 603; 80 FR 2473; 80 FR 3305; 80 FR 3308; 80 FR 3723; 80 FR 7679; 80 FR 8751; 80 FR 8927; 80 FR 12248; 80 FR 12254; 80 FR 12547; 80 FR 14220; 80 FR 14223; 80 FR 15859; 80 FR 15863; 80 FR 16500; 80 FR 16502; 80 FR 18693; 80 FR 18696; 80 FR 20559; 80 FR 22773; 80 FR 25766; 80 FR 25768; 80 FR 26139; 80 FR 26320; 80 FR 29149; 80 FR 29152; 80 FR 29154; 80 FR 31635; 80 FR 31640; 80 FR 31962; 80 FR 33009; 80 FR 33011; 80 FR 45573; 80 FR 48409; 81 FR 28138; 81 FR 39320; 81 FR 60115; 81 FR 66720; 81 FR 68098; 81 FR 70251; 81 FR 72642; 81 FR 72664; 81 FR 90050; 81 FR 94013; 81 FR 96165; 81 FR 96178; 81 FR 96180; 82 FR 13043; 82 FR 13045; 82 FR 13048; 82 FR 13187; 82 FR 15277; 82 FR 17736; 82 FR 18949; 82 FR 18954; 82 FR 18956; 82 FR 20962; 82 FR 22379; 82 FR 23712; 82 FR 24430; 82 FR 26224; 82 FR 28734; 82 FR 35050; 82 FR 37499). They have submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

In accordance with 49 U.S.C. 31136(e) and 31315, the following groups of drivers received renewed exemptions in the month of June and are discussed below. As of June 4, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 99 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (64 FR 40404; 64 FR 66962; 65 FR 66286; 65 FR 78256; 66 FR 13825; 66 FR 16311; 67 FR 10475; 67 FR 68719; 68 FR 2629; 68 FR 10301; 68 FR 13360; 68 FR 19596; 68 FR 19598; 68 FR 33570; 69 FR 26206; 69 FR 33997; 69 FR 53493; 69 FR 61292; 69 FR 62742; 69 FR 64806; 69 FR 71100; 70 FR 2701; 70 FR 2705; 70 FR 12265; 70 FR 16886; 70 FR 16887; 70 FR 17504; 70 FR 25878; 70 FR 30997; 71 FR 26602; 71 FR 32183; 71 FR 41310; 71 FR 62148; 71 FR 63379; 72 FR 180; 72 FR 184; 72 FR 1050; 72 FR 1051; 72 FR 1053; 72 FR 1056; 72 FR 9397; 72 FR 11425; 72 FR 11426; 72 FR 12666; 72 FR 18726; 72 FR 25831; 72 FR 27624; 72 FR 28093; 73 FR 27017; 73 FR 35194; 73 FR 35197; 73 FR 35199; 73 FR 36955; 73 FR 48273; 73 FR 48275; 73 FR 61925; 73 FR 76439; 73 FR 76440; 73 FR 78423; 74 FR 6211; 74 FR 7097; 74 FR 8302; 74 FR 8842; 74 FR 11988; 74 FR 11991; 74 FR 15584; 74 FR 15586; 74 FR 19270; 74 FR 20253; 74 FR 21427; 75 FR 25917; 75 FR 27621; 75 FR 36778; 75 FR 39727; 75 FR 52062; 75 FR 59327; 75 FR 72868; 75 FR 77492; 75 FR 77942; 75 FR 79083; 75 FR 79084; 75 FR 80887; 76 FR 5425; 76 FR 9856; 76 FR 9865; 76 FR 11215; 76 FR 12216; 76 FR 15361; 76 FR 17481; 76 FR 17483; 76 FR 20076; 76 FR 21796; 76 FR 25762; 76 FR 28125; 76 FR 29026; 76 FR 49528; 76 FR 61143; 77 FR 27847; 77 FR 38386; 77 FR 48590; 77 FR 52381; 77 FR 52388; 77 FR 52389; 77 FR 64839; 77 FR 64841; 77 FR 68202; 77 FR 70534; 77 FR 74731; 77 FR 74734; 77 FR 75494; 77 FR 75496; 77 FR 76167; 78 FR 800; 78 FR 9772; 78 FR 10250; 78 FR 11731; 78 FR 12811; 78 FR 12815; 78 FR 12822; 78 FR 14410; 78 FR 16761; 78 FR 16762; 78 FR 16912; 78 FR 18667; 78 FR 22596; 78 FR 22602; 78 FR 24300; 78 FR 26106; 78 FR 29431; 78 FR 30954; 78 FR 67460; 79 FR 29495; 79 FR 35212; 79 FR 47175; 79 FR 51642; 79 FR 58856; 79 FR 59348; 79 FR 59357; 79 FR 65759; 79 FR 65760; 79 FR 69985; 79 FR 72754; 79 FR 74168; 79 FR 74169; 80 FR 603; 80 FR 2473; 80 FR 3305; 80 FR 3308; 80 FR 3723; 80 FR 7679; 80 FR 8751; 80 FR 8927; 80 FR 12248; 80 FR 12254; 80 FR 12547; 80 FR 14220; 80 FR 14223; 80 FR 15859; 80 FR 15863; 80 FR 16500; 80 FR 16502; 80 FR 18693; 80 FR 18696; 80 FR 20559; 80 FR 22773; 80 FR 25766; 80 FR 26320; 80 FR 29152; 80 FR 33011; 80 FR 45573; 81 FR 28138; 81 FR 39320; 81 FR 60115; 81 FR 66720; 81 FR 68098; 81 FR 70251; 81 FR 72642; 81 FR 72664; 81 FR 90050; 81 FR 94013; 81 FR 96165; 81 FR 96178; 81 FR 96180; 82 FR 13043; 82 FR 13045; 82 FR 13048; 82 FR 13187; 82 FR 15277; 82 FR 17736; 82 FR 18949; 82 FR 18954; 82 FR 18956; 82 FR 22379; 82 FR 23712; 82 FR 26224; 82 FR 28734):

Jawad K. Al-Shaibani (WA)
Dennis J. Ameling (IA)
Kreis C. Baldridge (TN)
Donald A. Becker (MI)
Rex A. Botsford (MI)
David B. Bowman (PA)
Nathan J. Bute (IN)
Ricky D. Cain (NM)
Toby L. Carson (TN)
Robert M. Cassell, Jr. (NC)
Robert A. Casson (KY)
Joseph Colecchi (PA)
David E. Crane (OH)
Anthony C. Curtis (WA)
Terry L. Daneau (NH)
Terry J. Dare (IN)
Stephen R. Daugherty (IN)
Joseph A. Dean (AR)
Tracy A. Doty (TN)
Glenn E. Dowell (IN)
Donald D. Dunphy (VA)
Jerald O. Edwards (ID)
Paul E. Emmons (RI)
David L. Erickson (SD)
Breck L. Falcon (LA)
Juneau Faulkner (GA)
Anton Filic (TX)
John D. Fortino (NY)
James P. Gapinski (MN)
Jerry D. Gartman (TX)
Eric M. Giddens, Sr. (DE)
Richard G. Gruber (SC)
Matthew J. Hahn (PA)
John R. Harper (KS)
Dennis K. Harris (GA)
Jerome A. Henderson (VA)
Andrew F. Hill (TX)
Charlie E. Hoggard (TX)
William D. Holt (AZ)
Paul W. Hunter (AL)
Richard S. Huzzard (PA)
Leon E. Jackson (GA)
Francisco J. Jimenez (TX)
William D. Johnson (OK)
Jason P. Jones (IN)
Christopher J. Kane (VT)
Lester H. Killingsworth (TX)
Scott A. Lambertson (MN)
Leslie A. Landschoot (NY)
Robert T. Lantry (MA)
Gerald D. Larson (WI)
Gene A. Lesher, Jr. (WV)
Phillip L. Mangen (OH)
Darrel R. Martin (MD)
Michael E. McAfee (KY)
Kenton D. McCullough (VA)
Anthony R. Melton (SC)
Clarence M. Miles (OK)
Anthony Miller (OH)
Steven M. Montalbo (CA)
John W. Montgomery (MA)
Jay C. Naccarato (WA)
James P. O'Berry (GA)

William K. Otwell (LA)
Michael J. Paul (LA)
Huber N. Pena Ortega (CO)
Harlie C. Perryman (FL)
Larry B. Peterson (AR)
James R. Petre (MD)
Dennis W. Pevey (GA)
Daniel A. Rau (NJ)
Donald G. Reed (FL)
Menno H. Reiff (PA)
Alvaro F. Rodriguez (TX)
Vincent Rubino (NJ)
Andrew H. Rusk (IL)
Ronald P. Schoborg (AR)
Richie J. Schwendy (IL)
John M. Sexton (CA)
Phillip Shelburne (TX)
Sammie Soles, Jr. (MI)
Randy G. Spilman (OH)
David A. Stinelli (PA)
Nelson J. Stokke (CA)
Paul C. Swanson (IL)
Thomas R. Test (VA)
Steven L. Tiefenthaler (IA)
Gordon F. Ulm (OH)
Dennis M. Varga (OH)
Russell E. Ward (NH)
Keith Washington (IL)
Robert A. Wegner (MN)
Donald L. Weston (PA)
Wayne A. Whitehead (NY)
Mark B. Wilmer (VA)
Thomas W. Workman (IL)
Henry P. Wurtz (SD)
Kevin D. Zaloudek (VT)
Larry K. Zielinski (OR)

The drivers were included in docket numbers FMCSA–1999–5748; FMCSA–2000–7918; FMCSA–2000–8398; FMCSA–2002–12844; FMCSA–2003–14223; FMCSA–2003–14504; FMCSA–2004–17984; FMCSA–2004–18885; FMCSA–2004–19477; FMCSA–2005–20027; FMCSA–2005–20560; FMCSA–2006–24783; FMCSA–2006–25246; FMCSA–2006–26066; FMCSA–2007–27333; FMCSA–2008–0106; FMCSA–2008–0398; FMCSA–2009–0054; FMCSA–2010–0082; FMCSA–2010–0385; FMCSA–2011–0010; FMCSA–2011–0024; FMCSA–2011–0142; FMCSA–2012–0104; FMCSA–2012–0215; FMCSA–2012–0280; FMCSA–2012–0337; FMCSA–2012–0338; FMCSA–2013–0022; FMCSA–2013–0024; FMCSA–2014–0006; FMCSA–2014–0296; FMCSA–2014–0298; FMCSA–2014–0300; FMCSA–2014–0302; FMCSA–2014–0304; FMCSA–2014–0305; FMCSA–2016–0028; FMCSA–2016–0206; FMCSA–2016–0209; FMCSA–2016–0210; FMCSA–2016–0213; FMCSA–2016–0377; FMCSA–2017–0014; FMCSA–2017–0016. Their exemptions are applicable as of June 4, 2019, and will expire on June 4, 2021.

As of June 6, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 29 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (78 FR 20376; 78 FR 34141; 80 FR 26139; 80 FR 29149; 80 FR 48409; 82 FR 20962; 82 FR 22379; 82 FR 37499):

Glenn Blanton (OH)
David A. Buchanan (SC)
Matthew J. Buersken (MN)
Brian E. Burrows (TX)
Gary G. Colby (UT)
Stephen M. Cook (PA)
Jeremy L. Fricke (ND)
Jayme L. Gilbert (NY)
Jonathen M. Gilligan (NY)
Michael S. Higham (IL)
Lloyd M. Hoover (PA)
Robert W. Kleve (IA)
Damian Klyza (NJ)
John J. Lackey (CA)
Anthony Lang (NH)
Jason C. Laub (OH)
Edward J. Lavin (CT)
Collin C. Longacre (PA)
Luther A. McKinney (VA)
Raymond W. Meier (WA)
Enes Milanovic (MI)
John R. Miller (PA)
David G. Neff (KY)
Stuart W. Penner (KS)
Michael L. Penrod (IA)
Donie L. Rhoads (MT)
Michael J. Tauriac, Jr. (LA)
Anthony J. Thornburg (MI)
Don S. Williams (AL)

The drivers were included in docket numbers FMCSA–2013–0025; FMCSA–2015–0048; FMCSA–2017–0017. Their exemptions are applicable as of June 6, 2019, and will expire on June 6, 2021.

As of June 12, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following six individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (74 FR 19267; 74 FR 28094; 76 FR 32016; 78 FR 32703; 80 FR 25768; 82 FR 37499):

Michael D. Abel (NE)
Paul M. Christina (PA)
Johnny K. Hiatt (NC)
George M. Nelson (OH)
Christopher A. Weidner (CT)
Paul A. Wolfe (OH)

The drivers were included in docket number FMCSA–2009–0086. Their exemptions are applicable as of June 12, 2019, and will expire on June 12, 2021.

As of June 13, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following seven individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (72 FR 21313; 72 FR 32703; 74 FR 23472; 76 FR 32017; 78 FR 32708; 80 FR 29154; 82 FR 37499):

Roosevelt Bell, Jr. (NC)
David K. Boswell (TN)
Michael S. Crawford (IL)
Rex A. Dyer (VT)
Patrick J. Goebel (IA)
Kenneth C. Reeves (OR)
Thomas E. Summers, Sr. (OH)

The drivers were included in docket number FMCSA–2007–27515. Their exemptions are applicable as of June 13, 2019, and will expire on June 13, 2021.

As of June 20, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following three individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (72 FR 21313; 72 FR 32703; 74 FR 23472; 76 FR 32017; 78 FR 16912; 78 FR 22598; 78 FR 29431; 78 FR 32708; 78 FR 37274; 80 FR 31635; 82 FR 37499):

Darryl W. Hardy (AL);
Terry L. Lipscomb (AL);
and Dustin N. Sullivan (MD)

The drivers were included in docket numbers FMCSA–2007–27515; FMCSA–2013–0024; FMCSA–2013–0026. Their exemptions are applicable as of June 20, 2019, and will expire on June 20, 2021.

As of June 26, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 13 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (63 FR 66226; 64 FR 16517; 65 FR 20245; 65 FR 45817; 65 FR 57230; 65 FR 77066; 66 FR 17743; 66 FR 17994; 66 FR 33990; 67 FR 57266; 68 FR 35772; 70 FR 2701; 70 FR 16887; 70 FR 17504; 70 FR 30997; 70 FR 33937; 72 FR 12666; 72 FR 25831; 72 FR 32705; 74 FR 15586; 74 FR 26464; 76 FR 21796; 76 FR 34135; 78 FR 34140; 80 FR 33009; 82 FR 37499):

Johnny A. Beutler (SD)
Brett L. Condon (MD)
Christopher A. Deadman (MI)
Daryl A. Jester (DE)
James P. Jones (ME)
Clyde H. Kitzan (ND)
Larry J. Lang (MI)
William A. Moore, Jr. (NV)
Richard S. Rehbein (MN)
David E. Sanders (NC)
David B. Speller (MN)
Lynn D. Veach (IA)
Harry S. Warren (FL)

The drivers were included in docket numbers FMCSA–1998–4334; FMCSA–2000–7006; FMCSA–2000–7363; FMCSA–2001–9258; FMCSA–2005–

20027; FMCSA–2005–20560; FMCSA–2007–27333. Their exemptions are applicable as of June 26, 2019, and will expire on June 26, 2021.

As of June 27, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following four individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (82 FR 24430; 82 FR 35050):

Wade J. Jandreau (ME)
Thomas M. Leonard (PA)
Daniel L. Troop (MI)
Jeffrey Waterbury (NY)

The drivers were included in docket number FMCSA–2017–0018. Their exemptions are applicable as of June 27, 2019, and will expire on June 27, 2021.

As of June 28, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following ten individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (76 FR 25766; 76 FR 37885; 78 FR 37270; 80 FR 31640; 82 FR 37499):

Jan M. Bernath (OH)
Joseph L. Butler (IN)
Shawn Carroll (OK)
Mark T. Gileau (CT)
Peter D. Gouge (IA)
Alan D. Harberts (IA)
Wendell S. Sehen (OH)
Gary E. Valentine (OH)
Kevin W. Van Arsdol (CO)
Charles Van Dyke (WI)

The drivers were included in docket number FMCSA–2011–0092. Their exemptions are applicable as of June 28, 2019, and will expire on June 28, 2021.

As of June 30, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following two individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (70 FR 2701; 70 FR 16887; 70 FR 17504; 70 FR 30997; 72 FR 27624; 72 FR 34062; 74 FR 26471; 76 FR 34133; 78 FR 57677; 80 FR 31962; 82 FR 37499):

Edmund J. Barron (PA);
and Roger K. Cox (NJ)

The drivers were included in docket numbers FMCSA–2005–20027; FMCSA–2005–20560. Their exemptions are applicable as of June 30, 2019, and will expire on June 30, 2021.

V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must undergo an annual physical examination (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements in 49 CFR 391.41(b)(10), and (b) by a certified Medical Examiner, as defined by 49 CFR 390.5, who attests that the driver is otherwise physically qualified under 49 CFR 391.41; (2) each driver must provide a copy of the ophthalmologist's or optometrist's report to the Medical Examiner at the time of the annual medical examination; and (3) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file or keep a copy of his/her driver's qualification if he/her is self- employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VI. Conclusion

Based upon its evaluation of the 173 exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above. In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for two years unless revoked earlier by FMCSA.

Issued on: May 8, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–09938 Filed 5–13–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1998–4334; FMCSA–2000–7363; FMCSA–2000–7918; FMCSA–2002–13411; FMCSA–2003–14223; FMCSA–2004–19477; FMCSA–2005–20027; FMCSA–2006–25246; FMCSA–2006–26066; FMCSA–2008–0106; FMCSA–2008–0340; FMCSA–2008–0398; FMCSA–2009–0154; FMCSA–2010–0187; FMCSA–2010–0201; FMCSA–2010–0327; FMCSA–2010–0354; FMCSA–2010–0372; FMCSA–2010–0413; FMCSA–2011–0010; FMCSA–2011–0380; FMCSA–2012–0278; FMCSA–2012–0279; FMCSA–2012–0337; FMCSA–2012–0338; FMCSA–2012–0339; FMCSA–2013–0021; FMCSA–2013–0022; FMCSA–2013–0023; FMCSA–2014–0005; FMCSA–2014–0006; FMCSA–2014–0010; FMCSA–2014–0298; FMCSA–2014–0299; FMCSA–2014–0300; FMCSA–2014–0301; FMCSA–2014–0302; FMCSA–2014–0304; FMCSA–2015–0347; FMCSA–2016–0207; FMCSA–2016–0208; FMCSA–2016–0209; FMCSA–2016–0212; FMCSA–2016–0213; FMCSA–2016–0214; FMCSA–2016–0377]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for 110 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these individuals to continue to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates stated in the discussions below.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as

being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMCSA–1998–4334; FMCSA–2000–7363; FMCSA–2000–7918; FMCSA–2002–13411; FMCSA–2003–14223; FMCSA–2004–19477; FMCSA–2005–20027; FMCSA–2006–25246; FMCSA–2006–26066; FMCSA–2008–0106; FMCSA–2008–0340; FMCSA–2008–0398; FMCSA–2009–0154; FMCSA–2010–0187; FMCSA–2010–0201; FMCSA–2010–0327; FMCSA–2010–0354; FMCSA–2010–0372; FMCSA–2010–0413; FMCSA–2011–0010; FMCSA–2011–0380; FMCSA–2012–0278; FMCSA–2012–0279; FMCSA–2012–0337; FMCSA–2012–0338; FMCSA–2012–0339; FMCSA–2013–0021; FMCSA–2013–0022; FMCSA–2013–0023; FMCSA–2014–0005; FMCSA–2014–0006; FMCSA–2014–0010; FMCSA–2014–0298; FMCSA–2014–0299; FMCSA–2014–0300; FMCSA–2014–0301; FMCSA–2014–0302; FMCSA–2014–0304; FMCSA–2015–0347; FMCSA–2016–0207; FMCSA–2016–0208; FMCSA–2016–0209; FMCSA–2016–0212; FMCSA–2016–0213; FMCSA–2016–0214; FMCSA–2016–0377, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On March 20, 2019, FMCSA published a notice announcing its decision to renew exemptions for 110 individuals from the vision requirement in 49 CFR 391.41(b)(10) to operate a CMV in interstate commerce and requested comments from the public (84 FR 10385). The public comment period ended on April 19, 2019, and no comments were received.

As stated in the previous notice, FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(10).

The physical qualification standard for drivers regarding vision found in 49 CFR 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

III. Discussion of Comments

FMCSA received no comments in this preceding.

IV. Conclusion

Based on its evaluation of the 110 renewal exemption applications and comments received, FMCSA confirms its decision to exempt the following drivers from the vision requirement in 49 CFR 391.41(b)(10).

In accordance with 49 U.S.C. 31136(e) and 31315, the following groups of drivers received renewed exemptions in the month of April and are discussed below. As of April 1, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 63 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (65 FR 45817; 65 FR 66286; 65 FR 77066; 66 FR 13825; 67 FR 71610; 67 FR 76439; 68 FR 10298; 68 FR 13360; 69 FR 64806; 69 FR 64810; 70 FR 2701; 70 FR 2705; 70 FR 7545; 70 FR 12265; 70 FR 16887; 71 FR 63379; 72 FR 180; 72 FR 185; 72 FR 1050; 72 FR 1051; 72 FR 1056; 72 FR 7812; 72 FR 9397; 72 FR 11425; 72 FR 11426; 73 FR 35195; 73 FR 48275; 73 FR 75803; 73 FR 75806; 73 FR 76439; 73 FR 78422; 73 FR 78423; 74 FR 6209; 74 FR 6211; 74 FR 6689; 74 FR 8302; 74 FR 8842; 74 FR 37299; 74 FR 48344; 75 FR 44051; 75 FR 47883; 75 FR 54958; 75 FR 63255; 75 FR 65057; 75 FR 70078; 75 FR 72863; 75 FR 77951; 75 FR 79079; 75 FR 79081; 75 FR 79083; 75 FR 79084; 76 FR 1493; 76 FR 2190; 76 FR 4413; 76 FR 8809; 76 FR 9859; 76 FR 9861; 76 FR 9865; 76 FR 11215; 76 FR 12216; 76 FR 12408; 77 FR 17109; 77 FR 27845; 77 FR 40946; 77 FR 46153; 77 FR 59248; 77 FR 60008; 77 FR 68200; 77 FR 68202; 77 FR 70534; 77 FR 71669; 77 FR 71671; 77 FR 74273; 77 FR 74730; 77 FR 74731; 77 FR 74734; 77 FR 75496; 77 FR 76166; 78 FR 797; 78 FR 1919; 78 FR 8689; 78 FR 9772; 78 FR 10250; 78 FR 11731; 78 FR 12811; 78 FR 12813; 78 FR 12817; 78 FR 12822; 78 FR 14410; 79 FR 23797; 79 FR 27681; 79 FR 35212; 79 FR 38649; 79 FR 46153; 79 FR 47175; 79 FR 51643; 79 FR 59357; 79 FR 64001; 79 FR 69985; 79 FR 73397; 79 FR 73686; 79 FR 73687; 79 FR 73689; 79 FR 74169; 80 FR 603; 80 FR 2473; 80 FR 3305; 80 FR 3308; 80 FR 3723; 80 FR 6162; 80 FR 7678; 80 FR 7679; 80 FR 8751; 80 FR 8927; 80 FR 9304; 80 FR 12254; 80 FR 15859; 80 FR 18693; 80 FR 20562; 81 FR 1474; 81 FR 48493; 81 FR 70248; 81 FR 70251; 81 FR 70253; 81 FR 80161; 81 FR 86063; 81 FR 90046; 81 FR 90050; 81 FR 96165; 81 FR 96178; 81 FR 96180; 81 FR 96191; 82 FR 12683; 82 FR 13043; 82 FR 13048; 82 FR 15277):

Catarino Aispuro (OR)
Charles L. Alsager, Jr. (IA)
Sava A. Andjelich (IN)
Peter H. Bailey (MI)
Dewey E. Ballard Jr. (SC)
James B. Bierschbach (MN)
Kenneth L. Bowers, Jr. (MN)
Keith E. Breeding (IN)
Tanner H. Brooks (MS)
Larry D. Brown (MD)
David D. Bungori, Jr. (MD)
Jose S. Chavez (AZ)
Lee A. Clason (NE)
Cody W. Cook (OK)
Peter D. Costas (NY)
Cesar A. Cruz (IL)
Jose G. Cruz Romero (TX)
Matthew T. Eggers (IA)
John B. Etheridge (GA)
Leon C. Flynn (TX)
Michael A. Fouch (NJ)
Steven C. Fox (NC)
Ricky J. Franklin (OR)
Wilfred J. Gagnon (VT)
Gary A. Golson (AL)
David N. Groff (PA)
Michael D. Halferty (IA)
Kenneth L. Handy (IA)
Arlan T. Hrubes (TX)
Thomas J. Ivins (FL)
Daniel L. Jacobs (AZ)
Laine Lewin (MN)
Jose M. Limon-Alvarado (WA)
Carl A. Lohrbach (OH)
Chris D. McCance (IL)
Michael W. McCann (VA)
Michael W. McClain (CO)
Peter E. McDonnell (MA)
James T. McGraw, Jr. (PA)
Patrick J. McMillen (WI)
Mark Meacham (NC)
James E. Menz (NY)
Elmer R. Miller (IL)
Timothy L. Morton (NC)
Ali Nimer (IL)
Jeffrey L. Olson (MN)
Timothy L. O'Neill (NY)
Roberto Ramos (TX)

Kevin C. Rich (NC)
Ronald M. Scott (IN)
Gerardo Silva (IL)
Steve C. Sinclair (IA)
Gerald E. Skalitzky (WI)
Paul J. Stewart (CO)
Artis Suitt (NC)
David T. Tann (NC)
Danny R. Tate (VA)
Grover C. Taylor (VA)
Timothy R. Tedford (IL)
Drake M. Vendsel (ND)
Bobby M. Warren (KY)
Charles A. Winchell (OK)
Rick L. Wood (PA)

The drivers were included in docket numbers FMCSA–2000–7363; FMCSA–2000–7918; FMCSA–2002–13411; FMCSA–2004–19477; FMCSA–2005–20027; FMCSA–2006–25246; FMCSA–2006–26066; FMCSA–2008–0106; FMCSA–2008–0340; FMCSA–2009–0154; FMCSA–2010–0187; FMCSA–2010–0201; FMCSA–2010–0327; FMCSA–2010–0354; FMCSA–2010–0413; FMCSA–2011–0380; FMCSA–2012–0278; FMCSA–2012–0279; FMCSA–2012–0337; FMCSA–2012–0338; FMCSA–2012–0339; FMCSA–2014–0005; FMCSA–2014–0006; FMCSA–2014–0010; FMCSA–2014–0298; FMCSA–2014–0299; FMCSA–2014–0300; FMCSA–2014–0301; FMCSA–2015–0347; FMCSA–2016–0207; FMCSA–2016–0208; FMCSA–2016–0209; FMCSA–2016–0212. Their exemptions are applicable as of April 1, 2019, and will expire on April 1, 2021.

As of April 4, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following individual, Thomas L. Terrell (IA), has satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (78 FR 10251; 78 FR 20379; 80 FR 12254).

The driver was included in docket number FMCSA–2013–0021. The exemption is applicable as of April 4, 2019, and will expire on April 4, 2021.

As of April 5, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following two individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (63 FR 66226; 64 FR 16517; 66 FR 17994; 68 FR 15037; 70 FR 2701; 70 FR 14747; 70 FR 16887; 72 FR 12665; 74 FR 9329; 76 FR 15360; 78 FR 16035; 80 FR 13070; 82 FR 15277):

Richard D. Carlson (MN);
and Donald P. Dodson, Jr. (WV)

The drivers were included in docket numbers FMCSA–1998–4334; FMCSA–2005–20027. Their exemptions are applicable as of April 5, 2019, and will expire on April 5, 2021.

As of April 6, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following nine individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (74 FR 7097; 74 FR 15584; 76 FR 15361; 78 FR 16761; 80 FR 12547; 82 FR 12678; 82 FR 15277; 82 FR 18949):

Tyler D. Baseman (MN)
Robert A. Ferrucci (FL)
Cory W. Haupt (SD)
Peter W. Lampasone (NY)
Edward H. Lampe (OR)
Thomas L. Lange (CO)
James E. Russell (AZ)
Kendrick T. Williams (NC)
Forrest L. Wright (AL)

The drivers were included in docket numbers FMCSA–2008–0398; FMCSA–2016–0214. Their exemptions are applicable as of April 6, 2019, and will expire on April 6, 2021.

As of April 7, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following four individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (80 FR 12248; 80 FR 29152; 82 FR 15277):

Bradley J. Compton (ID)
Thomas P. Fitzsimmons (NC)
Steve L. Frisby (CA)
Daryl G. Gibson (FL)

The drivers were included in docket number FMCSA–2014–0302. Their exemptions are applicable as of April 7, 2019, and will expire on April 7, 2021.

As of April 8, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following four individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (82 FR 13045; 82 FR 18956):

Lesco R. Chubb (GA)
Stephen M. Currie (TX)
James S. Hummel (PA)
Robert R. Martin (VA)

The drivers were included in docket number FMCSA–2016–0377. Their exemptions are applicable as of April 8, 2019, and will expire on April 8, 2021.

As of April 11, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following 13 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (63 FR 66226; 64 FR 16517; 66 FR 17994; 68 FR 15037; 70 FR 14747; 72 FR 12665; 74 FR 9329; 76 FR 7894; 76 FR 9856; 76 FR 15360; 76 FR 20076; 76 FR 20078; 78 FR 16762; 80 FR 15863; 82 FR 13187; 82 FR 15277; 82 FR 23712):

Gary W. Balcom (MI)
Wesley M. Creamer (NM)
Ray A. Fields (KS)
Bruce J. Greil (WI)
Thomas A. Grigsby (AR)
Eugene C. Hamilton (NC)
Jay A. Harding (OR)
Melvin L. Hipsley (MD)
Paul J. Jones (NY)
Stephanie D. Klang (MO)
Pedro G. Limon (TX)
Larry D. Robinson (MO)
Wade C. Uhlir (MN)

The drivers were included in docket numbers FMCSA–1998–4334; FMCSA–2010–0372; FMCSA–2011–0010; FMCSA–2016–0213. Their exemptions are applicable as of April 11, 2019, and will expire on April 11, 2021.

As of April 16, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following individual, Scott Wallbank (MA), has satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (78 FR 12815; 78 FR 22602; 80 FR 14220; 82 FR 23712).

The driver was included in docket number FMCSA–2013–0022. The exemption is applicable as of April 16, 2019, and will expire on April 16, 2021.

As of April 18, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following eight individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (80 FR 14223; 80 FR 33011; 82 FR 15277):

Jaroslav Cigler (IN)
Randy A. Cimei (IL)
Phillip E. Fitzpatrick (NM)
Lucien W. Foote (NH)
Ronald J. Gruszecki (IL)
Alan L. Helfer (IL)
John R. Ropp (IL)
Darwin L. Stuart (IL)

The drivers were included in docket number FMCSA–2014–0304. Their exemptions are applicable as of April 18, 2019, and will expire on April 18, 2021.

As of April 21, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following four individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (65 FR 66286; 66 FR 13825; 68 FR 10300; 68 FR 10301; 68 FR 19596; 70 FR 7546; 70 FR 16886; 72 FR 7111; 72 FR 18726; 74 FR 11991; 75 FR 47883; 75 FR 63257; 76 FR 17483; 77 FR 60010; 78 FR 18667; 80 FR 16500; 82 FR 15277):

Michael P. Curtin (IL)
James G. Etheridge (TX)

James R. Rieck (CA)
Janusz Tyrpien (FL)

The drivers were included in docket numbers FMCSA–2000–7918; FMCSA–2003–14223; FMCSA–2010–0187. Their exemptions are applicable as of April 21, 2019, and will expire on April 21, 2021.

As of April 24, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315, the following individual, Gale L. Smith (PA), has satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (78 FR 14405; 78 FR 24296; 80 FR 16509; 82 FR 15277).

The driver was included in docket number FMCSA–2013–0023. The exemption is applicable as of April 24, 2019, and will expire on April 24, 2021.

In accordance with 49 U.S.C. 31315, each exemption will be valid for two years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: May 8, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–09939 Filed 5–13–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA 2019–0004]

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to approve a revision of a previously approved information collection: Rail Fixed Guideway Systems; State Safety Oversight.

DATES: Comments must be submitted before July 15, 2019.

ADDRESSES: To ensure that your comments are not entered more than once into the docket, submit comments identified by the docket number by only one of the following methods:

1. *Website*: *www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site. (Note: The U.S. Department of Transportation's (DOT's) electronic docket is no longer accepting electronic comments.) All electronic submissions must be made to the U.S. Government electronic docket site at *www.regulations.gov.* Commenters should follow the directions below for mailed and hand-delivered comments.

2. *Fax:* 202–366–7951.

3. *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

Instructions: You must include the agency name and docket number for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA has received your comments, include a self-addressed stamped postcard. Note that all comments received, including any personal information, will be posted and will be available to internet users, without change, to *www.regulations.gov*. You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000, (65 FR 19477), or you may visit *www.regulations.gov*. Docket: For access to the docket to read background documents and comments received, go to *www.regulations.gov* at any time. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Avenue SE, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Maria Wright, Office of Transit Safety & Oversight (202) 366–5922 or email: *Maria1.Wright@dot.gov.*

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Title: Rail Fixed Guideway Systems; State Safety Oversight

(OMB Number: 2132–0558)

Background: FTA administers a national program for public transportation safety under 49 U.S.C. Section 5329. One element of this program, at 49 U.S.C. 5329(e), requires States to oversee the safety of the rail transit agencies (RTAs) in their jurisdictions, including heavy and light rail systems, streetcars, inclined planes, cable cars, monorail/automated guideways and hybrid rail. Through this program, State Safety Oversight Agencies (SSOAs) ensure that RTAs identify and address safety risks, follow their safety rules and procedures, and take corrective action to address safety deficiencies. This program, which only applies to RTAs, enhances and replaces the State Safety Oversight (SSO) program previously authorized at 49 U.S.C. 5330.

The previously authorized program required SSOAs to perform oversight without Federal grant funding available. As a result, the approved information collection includes burden hours associated with activities administered by SSO agencies to collect information from RTAs and activities performed by RTAs to provide information to SSOAs. FTA decided to include these burden hours to address concerns raised by SSOAs and RTAs regarding unfunded Federal requirements.

With the expiration of the previously authorized program, and the new Federal grant program for States, authorized at 49 U.S.C. 5329(e)(6), FTA wishes to amend the information collection activities to focus only on the activities of SSOAs and RTAs to report information to FTA. Activities included in the previous information collection request that are not specifically related to FTA information collection are removed from this information collection request and are addressed in the Regulatory Impact Assessment developed for the final rule implementing 49 U.S.C. 5329(e). This proposed change aligns with the Paperwork Reduction Act (PRA) of 1995, United States Office of Personnel

Management, Paperwork Reduction Act (PRA) Guide, Version 2.0, 2011.

The revised information collection request includes the annual report FTA requires from SSOAs, the burden of which has been reduced substantially through the development of a web-based system designed to replace the existing spreadsheet-based process and provides direct interface with the National Transit Database. It also includes the FTA's grant management reporting requirement and the triennial audit program, which requires information from both SSOAs and RTAs. Further, the information collection reflects requirements for SSOAs and RTAs to respond to FTA directives and advisories and SSOAs participation in monthly teleconference calls with FTA. Finally, the information collection request includes RTA event notifications to FTA.

With these changes, the total burden hours have decreased from 586,443 hours for the previous information collection request to 16,365 representing an overall decrease of 570,078 hours.

Respondents: States and Rail Transit Agencies.

Estimated Annual Number of Respondents: 96 respondents.

Estimated Total Annual Burden: 16,365 hours.

Frequency: Annually.

Nadine Pembleton,

Director Office of Management Planning.

[FR Doc. 2019–09864 Filed 5–13–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2018–0063]

Agency Information Collection Request Under OMB Review; Request for Comments

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comment. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published May 16, 2018. The agency did not receive any comments.

DATES: Comments must be submitted on or before June 13, 2019.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Cristina Echemendia, Office of Crashworthiness Standards, NRM–130, 202–366–6345, National Highway Traffic Safety Administration, Room W43–447, Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). In compliance with those requirements, this notice announces the following information collection request has been forwarded to OMB.

NHTSA published a **Federal Register** notice requesting public comment on this information collection.[1] No comments were received.

The following describes the collection of information for which NHTSA intends to seek OMB approval. It is titled ''Consolidated Child Restraint System Registration, Labeling and Defect Notifications.'' (OMB Control Number: 2127–0576). NHTSA's information collection for child restraint systems expired April 30, 2018; therefore, this request is a reinstatement of a previously approved collection of information.

Title: Consolidated Child Restraint System Registration, Labeling and Defect Notifications.

OMB Control Number: 2127–0576.

Type of Request: Reinstatement of a previously approved collection of information.

Abstract: The National Traffic and Motor Vehicle Safety Act, now codified at 49 U.S.C. 30111, authorizes the issuance of Federal Motor Vehicle Safety Standards (FMVSS). Moreover, under 49 U.S.C. 30117, the Secretary is also authorized to require manufacturers to provide information to first purchasers of motor vehicles or motor vehicle equipment when the vehicle equipment is purchased, in the form of printed matter placed in the vehicle or attached to the motor vehicle or motor vehicle equipment. The Secretary is authorized to issue, amend, and revoke such rules and regulations as he/she deems necessary.

Child restraint manufacturers are required to provide an owner's registration card for purchasers of child safety seats in accordance with title 49 of the Code of Federal Regulation (CFR), Part 571.213, ''Child restraint systems.'' The registration card is perforated into two-parts (see Figures 1 and 2). The top part contains a message and suitable instructions to be retained by the purchaser. The bottom part is to be returned to the manufacturer by the purchaser. The bottom part includes prepaid return postage, the pre-printed name/address of the manufacturer, the pre-printed model and date of manufacture, and spaces for the purchaser to fill in his/her name and address. Optionally, child restraint manufacturers are permitted to add to the registration form: (a) Specified statements informing CRS owners that they may register online; (b) the internet address for registering with the company; (c) revisions to statements reflecting use of the internet to register; and (d) a space for the consumer's email address. For those CRS owners with access to the internet, online registration may be a preferred method of registering a CRS.

In addition to the registration card supplied by the manufacturer, NHTSA has implemented a CRS registration system to assist those individuals who have either lost the registration card that came with the CRS or purchased a previously owned CRS. Upon the owner's request, NHTSA provides a substitute registration form that can be obtained either by mail or from the internet [2] (see Figure 3). When the completed registration is returned to the agency, it is then submitted to CRS manufacturers. In the absence of a substitute registration system, many owners of child passenger safety seats, especially any second-hand owners, might not be notified of safety defects and noncompliances and would not have the defects and noncompliances remedied.

Child seat owner registration information is retained in the event owners need to be contacted for defect recalls or replacement campaigns. Chapter 301 of title 49 of the United States Code specifies that if either NHTSA or a manufacturer determines that motor vehicles or items of motor vehicle equipment contain a defect that relates to motor vehicle safety or fails to comply with an applicable Federal

[1] 83 FR22744 (May 16, 2018).

[2] *http://www-odi.nhtsa.dot.gov/cars/problems/recalls/register/childseat/csregfrm.pdf.*

motor vehicle safety standard, the manufacturer must notify owners and purchasers of the defect or noncompliance and must provide a remedy without charge. In title 49 of the CFR, part 577, defect and noncompliance notification for equipment items, including child restraint systems, must be sent by first class mail to the most recent purchaser known to the manufacturer.

Child restraint manufacturers are also required to provide a printed instructions brochure with step-by-step information on how the restraint is to be used. Without proper use, the effectiveness of these systems is greatly diminished. Each child restraint system must also have a permanent label. A permanently attached label gives ''quick look'' information on whether the restraint meets the safety requirements, recommended installation and use, and warnings against misuse. CRSs equipped with internal harnesses to restrain the child and with components to attach to a child restraint anchorage system are also required to be labeled with a child weight limit for using the lower anchors to attach the child restraint to the vehicle. The child weight limit depends on the weight of the CRS.

Affected Public: Child restraint manufacturers, individuals, and households.

Estimated Number of Respondents: 29 CRS manufacturers and approximately 2,569,399 Individuals and/or Households.

Frequency: Every certified child restraint system registered and some child restraint systems produced.

Number of Responses: 2,569,399 total annual registration responses [3] and 5,075,000 total annual labeling responses.

Estimated Total Annual Burden: 99,330 hours.

[3] This is the number of registrations filled out by consumers and the information collection by the CRS manufacturers of those received registrations.

The total estimated hour burden will increase from the 40,497 hours to 99,330 burden hours (58,833 burden hours increase). The increase in burden is due to the inclusion of the burden hours to consumers for filling out the registration form and due to an increase in CRS sales.

Estimated Total Annual Burden Cost: $2,351,374.

The total burden hours for this collection consist of: (1) The hours spent by consumers filling out the registration form, (2) the hours spent collecting registration information, and (3) the hours spent determining the maximum allowable child weight for lower anchor use and adding the information to the existing label and instruction manual.

NHTSA estimates 14,500,000 CRSs are currently sold each year by 29 CRS manufacturers. Of the CRSs sold each year, NHTSA estimates 2,147,504 are registered using registration cards and 421,895 are registered online. A consumer spends approximately 60 seconds filling out the registration form. The estimated annual number of burden hours for consumers to fill out the registration form is 42,823 hours (= 2,569,399 × (60 seconds/3,600 seconds/hour)). Manufacturers must spend about 90 seconds to enter the information from each returned registration card; while, online registrations are considered to have no burden for the manufacturer, as the information is entered by the purchaser. Therefore, the estimated annual number of burden hours for CRS registration information collection is 53,688 hours (= 2,147,504 × (90 seconds/3,600 seconds/hour)).

About 10,150,000 of the CRSs sold each year are equipped with internal harnesses. About half of the CRSs equipped with internal harnesses sold annually (5,075,000 = 10,150,000 × 0.5) would require a label with the maximum allowable child weight for using the lower anchors. Manufacturers must spend about two seconds to determine the maximum allowable child weight for lower anchor use and to add the information to the existing label and instruction manual. Therefore, the total annual burden hours for the information on the maximum allowable child weight in the existing label and instruction manual is 2,819 hours (= 5,075,000 × (2 seconds/3,600 seconds/hour)).

The estimated total annual number of burden hours is 99,330 (= 42,823 + 53,688 + 2,819) hours. The total estimated hour burden increased from 40,497 hours in the 2015 information collection notice to 99,330 burden hours (a 58,833 burden hour increase). The increase in burden is due to the inclusion of the burden hours to consumers for filling the registration form and due to an increase in CRS sales. In 2015, NHTSA estimated approximately 10,600,000 CRSs are sold each year while NHTSA's estimate in 2018 increased to 14,500,000 CRSs.

Public Comments Invited: You are asked to comment on any aspects of this information collection, including: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (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 the use of automated collection techniques or other forms of information technology.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Issued in Washington, DC, under authority delegated in 49 CFR 1.95 and 501.8.

Raymond R. Posten,

Associate Administrator for Rulemaking.

BILLING CODE 4910–59–P

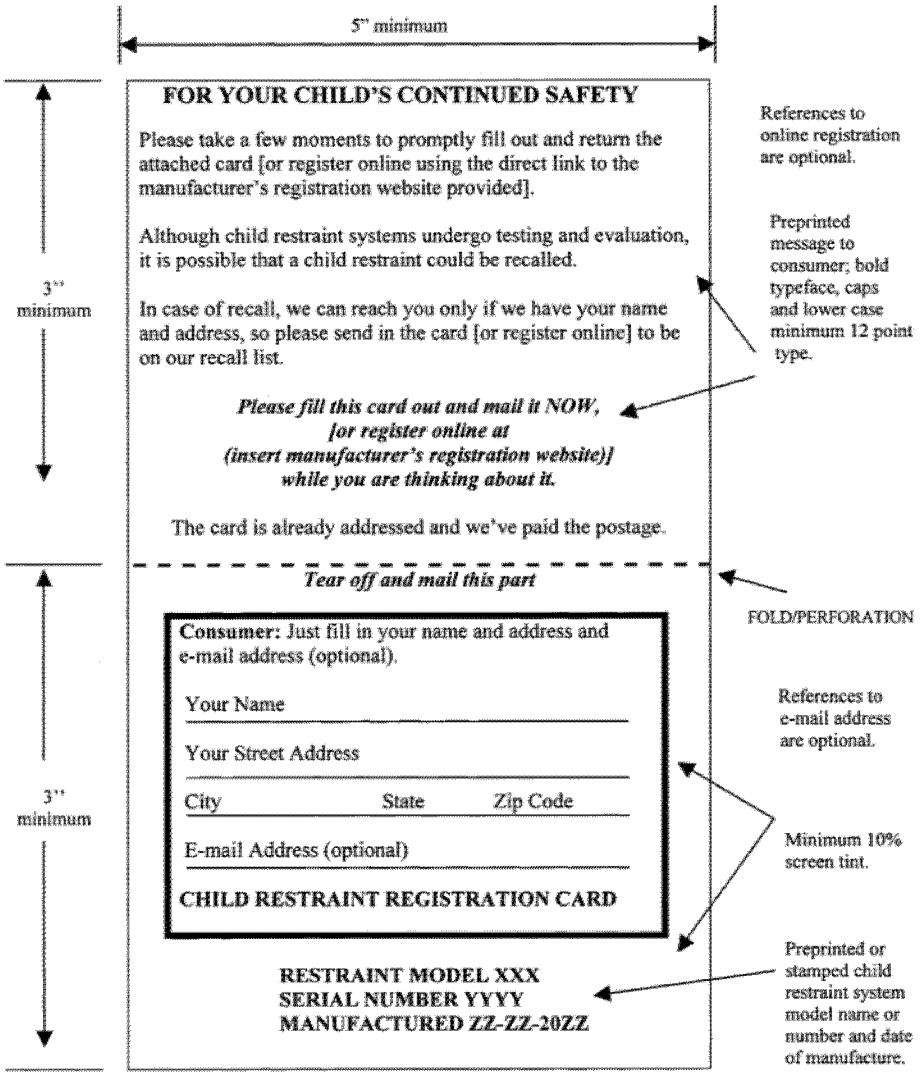


Figure 1 – Registration form for child restraint systems – product identification number and purchaser information side

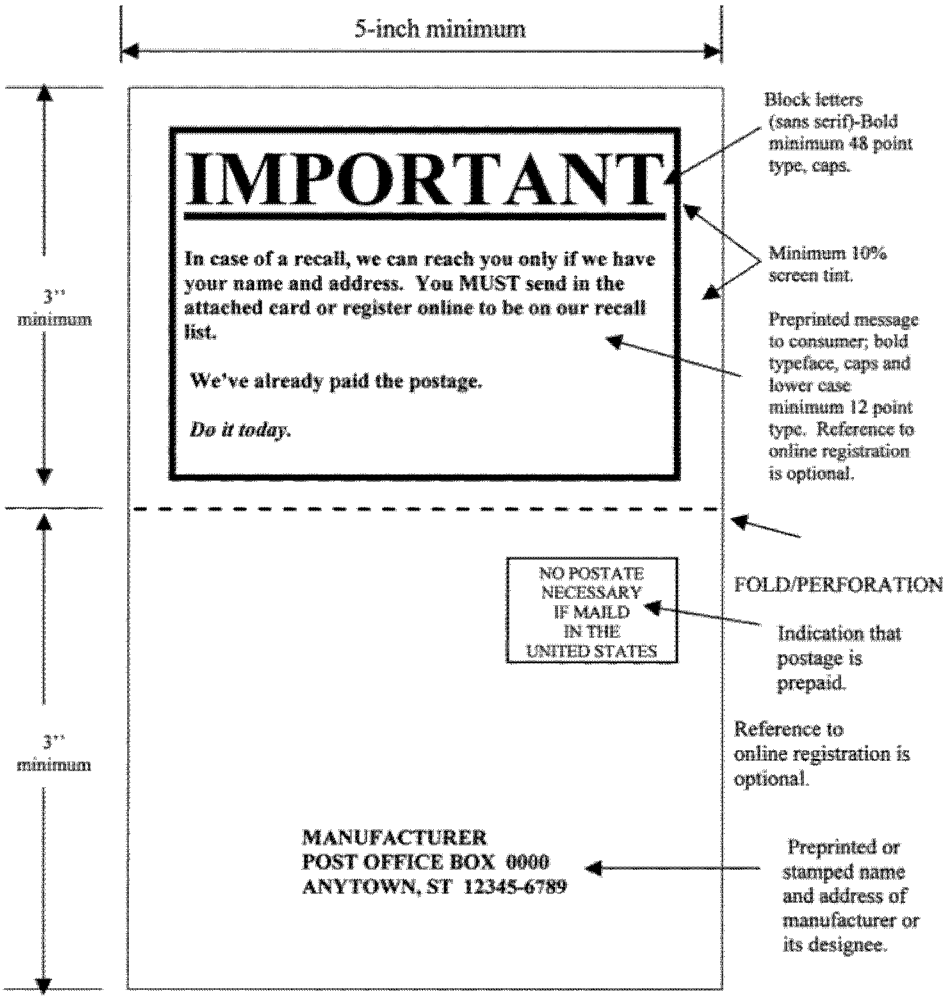
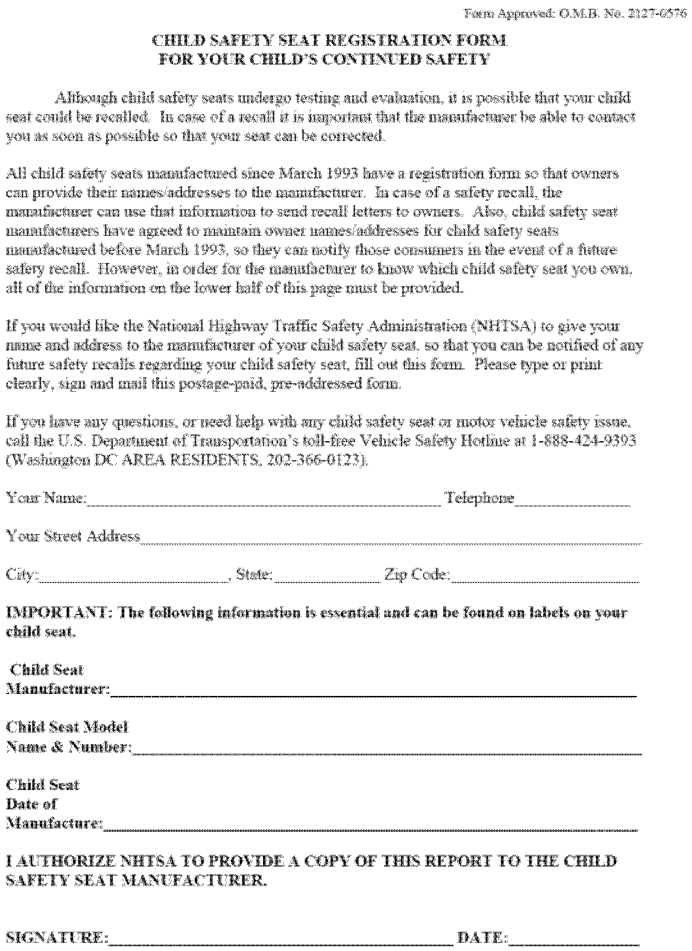


Figure 2 – Registration form for child restraint systems – address side



Form Approved: O.M.B. No. 2127-0576

CHILD SAFETY SEAT REGISTRATION FORM
FOR YOUR CHILD'S CONTINUED SAFETY

Although child safety seats undergo testing and evaluation, it is possible that your child seat could be recalled. In case of a recall it is important that the manufacturer be able to contact you as soon as possible so that your seat can be corrected.

All child safety seats manufactured since March 1993 have a registration form so that owners can provide their names/addresses to the manufacturer. In case of a safety recall, the manufacturer can use that information to send recall letters to owners. Also, child safety seat manufacturers have agreed to maintain owner names/addresses for child safety seats manufactured before March 1993, so they can notify those consumers in the event of a future safety recall. However, in order for the manufacturer to know which child safety seat you own, all of the information on the lower half of this page must be provided.

If you would like the National Highway Traffic Safety Administration (NHTSA) to give your name and address to the manufacturer of your child safety seat, so that you can be notified of any future safety recalls regarding your child safety seat, fill out this form. Please type or print clearly, sign and mail this postage-paid, pre-addressed form.

If you have any questions, or need help with any child safety seat or motor vehicle safety issue, call the U.S. Department of Transportation's toll-free Vehicle Safety Hotline at 1-888-424-9393 (Washington DC AREA RESIDENTS, 202-366-0123).

Your Name:_____ Telephone_____

Your Street Address_____

City:_____, State:_____ Zip Code:_____

IMPORTANT: The following information is essential and can be found on labels on your child seat.

Child Seat Manufacturer:_____

Child Seat Model Name & Number:_____

Child Seat Date of Manufacture:_____

I AUTHORIZE NHTSA TO PROVIDE A COPY OF THIS REPORT TO THE CHILD SAFETY SEAT MANUFACTURER.

SIGNATURE:_____ **DATE:**_____

Please mail to:
U.S. Department of Transportation
National Highway Traffic Safety Administration
DOT Vehicle Safety Hotline
400 7th Street, SW
Washington, DC 20590

The Privacy Act of 1974 - Public Law 93-579, As Amended. This information is requested pursuant to the authority vested in the National Highway Traffic Safety Act and subsequent amendments. You are under no obligation to respond to this questionnaire. Your response maybe used to assist the NHTSA in determining whether a manufacturer should take appropriate action to correct a safety defect. If the NHTSA proceeds with administration enforcement or litigation against a manufacturer, your response, or statistical summary thereof, may be used in support of the agency's action.

Figure 3 – Illustration of Child Safety Seat Registration Form

[FR Doc. 2019–09849 Filed 5–13–19; 8:45 am]
BILLING CODE 4910–59–C

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket Number NHTSA–2018–0015]

Reports, Forms and Record Keeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: The Department of Transportation invites public comments about our intention to request approval from the Office of Management and Budget (OMB) to reinstate an information collection. Before a Federal agency can collect certain information from the public, it must receive approval from the OMB. Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

DATES: Written comments should be submitted by July 15, 2019.

ADDRESSES: You may submit comments (identified by DOT Docket No. NHTSA–2018–0015) through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Hisham Mohamed, NHTSA 1200 New Jersey Ave. SE, West Building, Room W43–437, NVS–131, Washington, DC 20590. Mr. Mohamed's telephone number is 202–366–0307. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION:

Title: 49 CFR 575—Consumer Information Regulations (sections 103 and 105).

OMB Control Number: 2127–0049.

Type of Request: Request for Reinstatement of a Previously Approved Collection of Information.

Abstract: This information collection pertains to 49 CFR part 575. Part 575.103, ''Truck-camper loading,'' requires manufacturers of light trucks that are capable of accommodating slide-in campers to provide information on the cargo weight rating and the longitudinal limits within which the center of gravity for the cargo weight rating should be located. Section 103 also requires manufacturers of slide-in campers to affix to each camper a label that contains information relating to identification and proper loading of the camper and to provide more detailed loading information in the owner's manual.[1] 49 CFR part 575.105, ''Vehicle rollover,'' requires manufacturers of certain utility vehicles to affix a label in a prominent location alerting drivers that the handling and maneuvering characteristics of utility vehicles require special driving practices when these vehicles are operated.[2] Also, as required by 49 CFR part 575.6(d)(1)(i), vehicle manufacturers must submit to NHTSA's Administrator, prior to new model introduction, two copies of the information specified Part 575.103 and Part 575.105 that is applicable to the vehicles offered for sale. The information must be submitted at least 90 days before information on such vehicles is first provided for examination by prospective purchasers.

NHTSA estimates there are currently 17 slide-in camper manufacturers and seven manufacturers of trucks capable of accommodating slide-in campers complying with Part 575.103 and 18 utility vehicle manufacturers complying with Part 575.105 annually. There is overlap between the truck manufactures that must comply with section 103 and the utility vehicles that must comply with section 105. Therefore, NHTSA estimates there are only 35 annual respondents. This consists of a total of 18 manufacturers that comply with the requirement to label trucks capable of accommodating slide-in camper units and/or the requirement to label utility vehicles with a wheelbase of 110 inches or less and special features for occasional off-road operation. The additional 17 respondents are the manufacturers of slide-in campers. While NHTSA estimates there to be 35 annual respondents, only a small fraction would be required to submit information to NHTSA.

Based on prior years' manufacturer submissions, NHTSA estimates that it will receive 15 submissions from manufacturers of trucks capable of accommodating slide-in campers and manufacturers of utility vehicles that are required to comply with Part 575.105 annually. Manufacturers are not required to submit a response to NHTSA every year. Instead, they are only required to submit information to NHTSA when they introduce a new model or make changes to the information they provide in compliance with Part 575.103 and Part 575.105. Of the 15 submissions, NHTSA estimates 12 of the submissions will be for the introduction of new model vehicles. Manufacturers rarely make changes to the information provided to consumers, but we estimate at least three manufacturers will submit revised information each year. To satisfy the requirement to submit information to NHTSA, the light truck manufacturers and utility vehicle manufacturers gather only pre-existing data for the purposes of this regulation. Based on previous years' manufacturer information, the agency estimates it takes a light truck manufacturer a total of 20 hours to gather and arrange data in its proper format. The estimated annual burden for data gathering, arranging data in its proper format and distributing it to dealerships would be 300 hours (15 submissions × 20 hours per submission = 300 hours). Manufacturer information indicates it takes an average of $37.00 per hour for professional and clerical staff to gather the data and, distribute and print material. Therefore, the agency estimates the annual cost associated with the burden hours is $11,100 ($37.00 per hour × 300 burden hours).

NHTSA estimates it will take an average of 18 seconds (0.005 hours) to affix a label to each slide-in camper unit that is required to comply with Part 575.103 and each utility vehicle that is required to comply with Part 575.103.[3] NHTSA estimates that in each of the next three years 11,000 slide-in camper units and 3,000,000[4] utility vehicles

[1] The requirement to provide information in the owners' manuals of trucks capable of accommodating slide-in campers and the owners' manuals for slide-in campers is covered by NHTSA's information collection clearance with OMB Control No. 2127–0541.

[2] The requirements to provide information in the owners' manuals of utility vehicles with wheelbases of 110 inches or less and special features for occasional off-road operation is covered by NHTSA's information collection clearance with OMB Control No. 2127–0541.

[3] This is based on the estimated time to affix certification labels pursuant to 49 CFR 567. For more information, see the information collection clearance with OMB Control No. 2127–0510.

[4] NHTSA's data shows there were approximately 2,430,392 utility vehicles manufactured in 2016 with a wheelbase of 110 inches or less and special features for occasional off-road use. NHTSA's data from its Corporate Average Fuel Economy program shows that this figure is increasing each year. To account for this upward trend, NHTSA estimates 3,000,000 utility vehicles will be manufactured in

will be labeled pursuant to Part 575.103 and 105, respectively, and labeling will take approximately 1,5055 hours (3,011,000 truck camper units and utility vehicles × 0.005 hours = 15,055 hours). At a cost of $20 per hour, the total burden hours for affixing labels is estimated to be $301,100 annually (15,055 hours × $20.00 = $301,100).

NHTSA estimates each label costs $0.35 to print. Therefore, the total printing costs for the 3,011,000 labels would be $1,053,850 ($0.35 per label × 3,011,000 units). Therefore, NHTSA estimates the total cost to label each slide-in camper and utility vehicle to be $1,354,950 ($301,100 cost to affix labels + $1,053,850 printing costs). The total cost of this information collection is $1,366,050 ($1,354,950 for labeling + $11,100 for submissions).

The total estimated annual cost to manufacturers to comply with Part 575.103 and Part 575.105 requirements including label costs is $1,366,050. The annual reporting and recordkeeping cost burden decreased because the previous information collection clearance overestimated the number of utility vehicles manufactured that require labels pursuant to Part 575.105. Thus, the total annual cost decreased from $2,904,336 to $1,366,050. This represents an adjustment of (−$1,538,286). The total number of burden hours increased from 300 hours to 15,355 because this reinstatement counts labor hours for labeling each utility vehicle and slide-in camper.

Affected Public: Motor vehicle and equipment manufacturers.

Estimated Number of Respondents: 35 (18 utility vehicle and truck manufacturers and 17 slide-in camper manufacturers).

Frequency: Intermittently.

Number of Responses: 15 submissions to NHTSA and 3,011,000 labeling responses.

Estimated Total Annual Burden Hours: 15,850.

Estimated Total Annual Burden Cost: $1,366,050.

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 the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways 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.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Issued in Washington, DC, under authority delegated in 49 CFR 1.95 and 501.8.

Raymond R. Posten,

Associate Administrator for Rulemaking.

[FR Doc. 2019–09850 Filed 5–13–19; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2019–0098; Notice No. 2019–05]

Hazardous Materials; Lithium Battery Safety Advisory Committee Nominations

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Request for Member Nominations for the Lithium Battery Safety Advisory Committee.

SUMMARY: PHMSA is seeking nominations for individuals to serve as members on the Lithium Battery Safety Advisory Committee (the Committee). This is a safety advisory committee mandated by section 333(d) of the FAA Reauthorization Act of 2018 and established in accordance with the Federal Advisory Committee Act (FACA) of 1972. The committee will facilitate communication among manufacturers of lithium ion and lithium metal cells and batteries, manufacturers of products incorporating both large and small lithium ion and lithium metal batteries, air carriers, and the Federal Government. This communication will promote the safe transportation of lithium ion and lithium metal cells and batteries and improve the effectiveness and economic and social impacts of related regulation. No later than 180 days after the establishment of the Committee, the Committee shall submit to the Secretary and the appropriate committees of Congress a report that describes and evaluates the steps being taken in the private sector and by international regulatory authorities to implement and enforce requirements relating to the safe transportation of bulk shipments of lithium ion cells and batteries. The Committee will also identify any areas of regulatory requirements for which there is consensus that greater attention is needed.

DATES: Nominations must be received on or before June 4, 2019.

ADDRESSES: All nomination material should be emailed to the Advisory Committee's Program Manager, Lindsey Constantino, at *lithiumbatteryFACA@dot.gov* or mailed to the Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE, PHH–4, E23– 442, Washington, DC 20590, to the attention of Lindsey Constantino, Advisory Committee Program Manager, PHH–4.

FOR FURTHER INFORMATION CONTACT: Lindsey Constantino, International Transportation Specialist (PHH–4), U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE., East Building, 2nd Floor, Washington, DC 20590–0001, Telephone 202–366–0665, *lithiumbatteryFACA@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Advisory Committee Background

The Committee is a statutorily mandated advisory committee that provides a mechanism for:

(a) Facilitating communication among manufacturers of lithium ion and lithium metal cells and batteries, manufacturers of products incorporating both large and small lithium ion and lithium metal batteries, air carriers, and the Federal Government, regarding the safe transportation of lithium ion and lithium metal cells and batteries and the effectiveness and economic and social impacts of the regulation of such transportation.

(b) Providing the Secretary, the Federal Aviation Administration (FAA), and PHMSA with timely information about new lithium ion and metal battery technology and transportation safety practices and methodologies.

(c) Providing a forum for the Secretary to distribute information on this topic, as well as engage Committee members in discussions concerning the related activities of the Department of Transportation.

A complete list of duties for the Committee is outlined in section 333(d)(2) of the FAA Reauthorization Act of 2018. This committee is established in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2.

II. Membership

The Committee will consist of representatives from:

(a) Large volume manufacturers of lithium ion and lithium metal cells and batteries;

the next three years that will be required to comply with section 575.105.

(b) domestic manufacturers of lithium ion and lithium metal batteries or battery packs;

(c) manufacturers of consumer products powered by lithium ion and lithium metal batteries;

(d) manufacturers of vehicles powered by lithium ion and lithium metal batteries;

(e) marketers of products powered by lithium ion and lithium metal batteries;

(f) cargo air service providers based in the United States;

(g) passenger air service providers based in the United States;

(h) pilots and employees of air service providers described in bullets (f) and (g);

(i) shippers of lithium ion and lithium metal batteries for air transportation;

(j) manufacturers of battery-powered medical devices or batteries used in medical devices;

(k) employees of the Department of Transportation, including employees of FAA and PHMSA;

(l) representatives of such other Government departments and agencies as the Secretary determines appropriate; and

(m) any other individuals the Secretary determines are appropriate to comply with Federal law.

III. Terms of Participation

• All Group members must be able to attend a minimum of two meetings each year in Washington, DC, and other designated locations, or by teleconference.

• Members serve without compensation, although travel expenses, including per diem, may be eligible for reimbursement consideration based on budget availability.

• A member appointed for his or her individual views or advice must be appointed as a Special Government Employee (SGE). Other members will serve as Representatives or Regular Government Employees. SGEs are subject to certain Federal conflict of interest laws.

IV. Nomination Procedures

The PHMSA Administrator, on behalf of the Secretary, is seeking individual nominations for committee members, preferably executive level leadership, with diverse experiences and expertise in research and development; academia; human factors; lithium battery manufacturing; lithium battery testing; packaging manufacture and testing; air cargo safety; risk management; or other related experience *in manufacturing or transporting lithium batteries by air.* Any interested person may nominate one or more qualified individuals for membership on the Committee. Self-nominations are also accepted.

• Nominations must include a current, complete resume including business and home address, telephone number, email address, education, relevant professional or business experience, present occupation, and membership status in other working groups or advisory committees, past or present.

• Nominations must include a short biography identifying each nominee's qualifications and expertise.

• Nominations must include an indication of the category the individual nominated most identifies with, based on the list provided in paragraph II Membership. If an individual preforms functions in multiple categories, please choose the most relevant category.

• Nominations should highlight relevant experience on panels that have dealt with transportation safety, lithium battery safety, air transportation safety, or detail the nominee's interest in the subject matter that will be considered by the committee.

• Nominations must acknowledge that the nominee is aware of the nomination unless self-nominated.

Signed in Washington, DC, on May 8, 2019.

William S. Schoonover,

Associate Administrator, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2019–09878 Filed 5–13–19; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2019–0036]

Renewal of Information Collection (OMB No. 2105–0520) Agency Requests for Reinstatement of a Previously Approved Information Collection(s): Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and for Grants and Cooperative Agreements With Institutions of Higher Education, and Other Nonprofit Organizations

ACTION: Notice and request for comments.

SUMMARY: The Department of Transportation (DOT) invites public comments about our intention to request the Office of Management and Budget (OMB) approval for a previously approved information collection. These forms include Application for Federal Assistance (SF–424), Federal Financial Report (SF–425), Request for Advance or Reimbursement (SF–270) and Outlay Report and Request for Reimbursement for Construction Programs (SF–271).

We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on March 11, 2019, in the **Federal Register** (84 FR 8783, page(s) 8783–8784). No comments were received.

DATES: Comments must be submitted on or before June 13, 2019 in the **Federal Register** 2015–13488.

FOR FURTHER INFORMATION CONTACT: Audrey Clarke, Ph.D., Associate Director of the Financial Assistance Policy and Oversight Division, M–65, Office of the Senior Procurement Executive, Office of the Secretary, Room W83–313, Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, (202) 366–4268.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2105–0520.

Title: Uniform Administrative Requirements, Cost Principles, and Audit Requirement for Federal Awards.

Form Numbers: SF–424, SF–425, SF–270, and SF–271.

OMB Control Number: 2105–0520.

Type of Review: Revision of a previously approved collection.

Background: This is to request the Office of Management and Budget's (OMB) renewed three-year approved clearance for the information collection, entitled, ''Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards'' OMB Control No 2105–0520, which is currently due to expire on May 31, 2019. This information collection involves the use of various forms necessary because of management and oversight responsibilities of the agency imposed by OMB Circular 2 CFR 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The May 31, 2015 OMB Control Number is titled: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (OMB 2 CFR 200). These guidelines cover the following data collection standard forms (SF): Application for Federal Assistance (SF–424); Federal Financial Report (SF–425); Request for Advance or Reimbursement (SF–270); and Outlay Report & Request for Reimbursement for Construction Programs (SF–271).

No adjustments have been made to the burden estimates. In 2015, the Department estimated a combined total of 1,758 respondents and 123,060

burden hours. Therefore the 2019 burden estimates will remain the same.

Respondents: Grantees.

Number of Respondents: 1,758.

Number of Responses: 7,030.

Total Annual Burden Hours: 123,060.

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 the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department 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.

Authority: The Paperwork Reduction Act of 1995, Public Law 104–13; 44 U.S.C. chapter 35, as amended; and 49 CFR 1:48.

Issued in Washington, DC, on May 8, 2019.

Audrey Clarke,

Associate Director, Financial Assistance Policy and Oversight, Office of the Senior Procurement Executive.

[FR Doc. 2019–09937 Filed 5–13–19; 8:45 am]

BILLING CODE 4910–9X–P

FEDERAL REGISTER

Vol. 84 Tuesday,
No. 93 May 14, 2019

Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Parts 1904, 1910, 1915, et al.
Standards Improvement Project—Phase IV; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1904, 1910, 1915, and 1926

[OSHA–2012–0007]

RIN 1218–AC67

Standards Improvement Project—Phase IV

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule.

SUMMARY: In response to the President's Executive Order 13563, ''Improving Regulations and Regulatory Review,'' and consistent with Executive Order 13777, ''Enforcing the Regulatory Reform Agenda,'' OSHA is removing or revising outdated, duplicative, unnecessary, and inconsistent requirements in its safety and health standards. The current review, the fourth in this ongoing effort, the Standards Improvement Project-Phase IV (SIP–IV), reduces regulatory burden while maintaining or enhancing worker safety and health, and improving privacy protections.

DATES: This rule is effective on July 15, 2019. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of July 15, 2019. There are a number of collections of information contained in this final rule (see Section VI, Paperwork Reduction Act). Notwithstanding the general date of applicability that applies to all other requirements contained in the final rule, affected parties do not have to comply with the collections of information until the Department of Labor publishes a separate notice in the **Federal Register** announcing the Office of Management and Budget has approved them under the Paperwork Reduction Act.

ADDRESSES: In accordance with 28 U.S.C. 2112(a)(2), the agency designates Edmund C. Baird, Associate Solicitor of Labor for Occupational Safety and Health, Office of the Solicitor, Room S–4004, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210, to receive petitions for review of the final rule.

FOR FURTHER INFORMATION CONTACT:

General information and press inquiries: Mr. Frank Meilinger, OSHA Office of Communications: telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

Technical inquiries: Mr. Vernon Preston, Directorate of Construction: telephone: (202) 693–2020; fax: (202) 693–1689; email: *preston.vernon@dol.gov.*

Copies of this ***Federal Register*** *document.* Electronic copies are available at *www.regulations.gov.* This **Federal Register** document, as well as news releases and other relevant information, also are available at OSHA's web page at *www.osha.gov.*

SUPPLEMENTARY INFORMATION:

Incorporated Standards

The standards published by the American Thoracic Society (ATS) required in 29 CFR part 1910, subpart Z; the Federal Highway Administration (FHWA) required in 29 CFR part 1926, subpart G; the International Labour Organization (ILO) required in 29 CFR part 1910, subpart Z, 29 CFR part 1915, subpart Z, and 29 CFR part 1926, subpart Z; the International Organization for Standardization (ISO) required in 29 CFR part 1926, subpart W; and the Society of Automotive Engineers (SAE) required in 29 CFR part 1926, subpart W, are incorporated by reference into these subparts with the approval of the **Federal Register** under 5 U.S.C. 552(a) and 1 CFR part 51.

Reasonable Availability and Summary of the Incorporated Standards

American Thoracic Society—IBR Approval for §§ 1910.6 and 1910.1043(h)

The American Thoracic Society (ATS) provides free online public access to view and print a read-only copy of the materials incorporated into 29 CFR part 1910, subpart Z, by this rulemaking. Free online viewing and a printable version of Spirometric Reference Values from a Sample of the General U.S. Population. Hankinson JL, Odencrantz JR, Fedan KB. American Journal of Respiratory and Critical Care Medicine, 159:179–187, 1999, is available at *www.atsjournals.org/.*

Section 1910.1043(h)(2)(iii) required that health care providers conducting medical surveillance compare the employee's actual values to the predicted values in appendix C of the standard. NIOSH (CDC/NIOSH, 2003), ATS/ERS (Pellegrino et al., 2005), and ACOEM (Townsend, 2011) all recommend the Third National Health and Nutrition Examination Survey (NHANES III) as the most appropriate reference data set for assessing spirometry results for individuals in the U.S. population. OSHA is now revising this provision to specify use of the NHANES III reference data set and to replace the values currently in appendix C with the NHANES III values, derived from Spirometric Reference Values from a Sample of the General U.S. Population (Hankinson et al., 1999).

The NHANES III data set is the most recent and most representative of the U.S. population (Hankinson et al., 1999). It lists reference values for non-smoking, asymptomatic male and female Caucasians, African Americans, and Mexican Americans aged 8- to 80-years old. Strict adherence to ATS quality control standards ensured optimal accuracy in developing this data set of spirometry values (Hankinson et al., 1999).

Federal Highway Administration—IBR Approval for §§ 1926.200(g)(2) and 1926.201(a)

The Federal Highway Administration (FHWA), United States Department of Transportation provides free online access to view and print a read-only copy of the materials incorporated into 29 CFR part 1926, subpart G, by this rulemaking. Free online viewing and a printable version of the Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), 2009 Edition, December 2009 (including Revision 1 dated May 2012 and Revision 2 dated May 2012), is available at *www.fhwa.dot.gov.*

Subpart G has required that employers comply with Part VI of MUTCD, 1988 Edition, Revision 3, September 3, 1993 (''1988 Edition'') or December 2000 MUTCD (''Millennium Edition''). OSHA is revising subpart G to update the incorporation by reference of Part 6 of the MUTCD to the November 4, 2009 MUTCD (''2009 Edition''), including Revision 1 and Revision 2, both dated May 2012. This version of the MUTCD aims to expedite traffic, promote uniformity, improve safety, and incorporate technology advances in traffic control device application (74 FR 66730, 77 FR 28455, and 77 FR 28460).

International Labour Organization—IBR Approval for § 1910.6, Appendix E to § 1910.1001, § 1915.5, Appendix E to § 1915.1001, § 1926.6, and Appendix E to § 1926.1101

The International Labour Organization (ILO) provides free online access to view and print a read-only copy of the materials incorporated into 29 CFR part 1910, subpart Z, 29 CFR part 1915, subpart Z, and 29 CFR part 1926, subpart Z, by this rulemaking. Free online viewing and a printable version of the Guidelines for the Use of the ILO International Classification of Radiographs of Pneumoconioses, Revised Edition 2011, Occupational safety and health series; 22 (Rev.2011), is available at *www.ilo.org.*

Digital radiography systems are rapidly replacing traditional analog film-based systems in medical facilities, and both the ILO and the National Institute for Occupational Safety and Health (NIOSH) recently published guidelines for digital radiographs (see 81 FR at 68509). OSHA is updating the version of the Guidelines for the Use of ILO Classification of Radiographs of Pneumoconioses to the 2011 version (from the 1980 version), and clarifying that classification must be in accordance with the ILO classification system (rather than ''a professionally accepted Classification system'') in appendix E of each of the three asbestos standards (81 FR at 68510).

The International Organization for Standardization and the Society of Automotive Engineers—IBR Approval for Subpart W

The International Organization for Standardization (ISO) provides for purchase materials incorporated into 29 CFR part 1926, subpart W, by this rulemaking. ISO 3471:2008(E), Earth-moving machinery—Roll-over protective structures—Laboratory tests and performance requirements, Fourth Edition, Aug. 8, 2008; ISO 5700:2013(E), Tractors for agriculture and forestry—Roll-over protective structures—Static test method and acceptance conditions, Fifth Edition, May 1, 2013; and ISO 27850:2013(E), Tractors for agriculture and forestry—Falling object protective structures—Test procedures and performance requirements, First Edition, May 01, 2013, are available for purchase at *www.iso.org.*

The Society of Automotive Engineers (SAE) provides for purchase materials incorporated into 29 CFR part 1926, subpart W, by this rulemaking. SAE J167, Protective Frame with Overhead Protection-Test Procedures and Performance Requirements, approved July 1970; SAE J168, Protective Enclosures-Test Procedures and Performance Requirements, approved July 1970; SAE J320a, Minimum Performance Criteria for Roll-Over Protective Structure for Rubber-Tired, Self-Propelled Scrapers, revised July 1969 (editorial change July 1970); SAE J334a, Protective Frame Test Procedures and Performance Requirements, revised July 1970; SAE J394, Minimum Performance Criteria for Roll-Over Protective Structure for Rubber-Tired Front End Loaders and Rubber-Tired Dozers, approved July 1969 (editorial change July 1970); SAE J395, Minimum Performance Criteria for Roll-Over Protective Structure for Crawler Tractors and Crawler-Type Loaders, approved July 1969 (editorial change July 1970); SAE J396, Minimum Performance Criteria for Roll-Over Protective Structure for Motor Graders, approved July 1969; and SAE J397, Critical Zone—Characteristics and Dimensions for Operators of Construction and Industrial Machinery, approved July 1969, are available for purchase at *www.sae.org/standards.*

The original source standards for subpart W requirements were derived from SAE Standards. The American National Standards Institute (ANSI) and SAE subsequently canceled these standards. To design and develop new equipment, the industry now uses the most recent ISO standards. Equipment manufactured after the effective date of this final rule must meet the applicable test and performance requirements for the ISO standards. Equipment manufactured before the effective date of this final rule must meet the former SAE requirements of subpart W, or the test and performance requirements for the applicable ISO standards that apply to newly manufactured equipment.

ISO 3471:2008(E), Earth-moving machinery—Roll-over protective structures—Laboratory tests and performance requirements, Fourth Edition, Aug. 8, 2008 (''ISO 3471:2008''), IBR approved for §§ 1926.1001(c) and 1926.1002(c), specifies performance requirements for metallic roll-over protective structures (ROPS) for earth-moving machinery, as well as a consistent and reproducible means of evaluating the compliance with these requirements by laboratory testing using static loading on a representative specimen.

ISO 5700:2013(E), Tractors for agriculture and forestry—Roll-over protective structures—Static test method and acceptance conditions, Fifth Edition, May 1, 2013 (''ISO 5700:2013''), IBR approved for § 1926.1002(c), specifies a static test method and the acceptance conditions for roll-over protective structures (cab or frame) of wheeled or tracked tractors for agriculture and forestry.

ISO 27850:2013(E), Tractors for agriculture and forestry—Falling object protective structures—Test procedures and performance requirements, First Edition, May 01, 2013 (''ISO 27850:2013''), IBR approved for § 1926.1003(c), sets forth the test procedures and performance requirements for a falling object protective structure, in the event such a structure is installed on an agricultural or forestry tractor.

SAE J167, Protective Frame with Overhead Protection—Test Procedures and Performance Requirements, approved July 1970, IBR approved for § 1926.1003(b), establishes requirements of a frame including overhead cover for the protection of operators on wheel type agricultural and industrial tractors to minimize the possibility of operator injury resulting from accidental upsets and overhead hazards during normal operation.

SAE J168, Protective Enclosures—Test Procedures and Performance Requirements, approved July 1970, IBR approved for § 1926.1002(b), specifies test procedures and performance requirements for wheel type agricultural and industrial tractors equipped with protective enclosures necessary to fulfill the intended purposes.

SAE J320a, Minimum Performance Criteria for Roll-Over Protective Structure for Rubber-Tired, Self-Propelled Scrapers, revised July 1969 (editorial change July 1970), IBR approved for § 1926.1001(b), provides the testing agency with a means of testing for structural adequacy of a roll-over protective structure (ROPS) design.

SAE J334a, Protective Frame Test Procedures and Performance Requirements, revised July 1970, IBR approved for § 1926.1002(b), establishes requirements of a frame for the protection of operators on wheel type agricultural and industrial tractors to minimize the possibility of operator injury resulting from accidental upsets during normal operation.

SAE J394, Minimum Performance Criteria for Roll-Over Protective Structure for Rubber-Tired Front End Loaders and Rubber-Tired Dozers, approved July 1969 (editorial change July 1970) IBR approved for 1926.1001(b), provides the testing agency with a means of testing for structural adequacy of a roll-over protective structure (ROPS) design.

SAE J395, Minimum Performance Criteria for Roll-Over Protective Structure for Crawler Tractors and Crawler-Type Loaders, approved July 1969 (editorial change July 1970), IBR approved for § 1926.1001(b), provides the testing agency with a means of testing for structural adequacy of a roll-over protective structure (ROPS) design.

SAE J396, Minimum Performance Criteria for Roll-Over Protective Structure for Motor Graders, approved July 1969 (editorial change July 1970), IBR approved for § 1926.1001(b), provides the testing agency with a means of testing for structural adequacy of a roll-over protective structure (ROPS) design.

SAE J397, Critical Zone—Characteristics and Dimensions for Operators of Construction and Industrial Machinery, approved July 1969, IBR approved for § 1926.1001(b), covers

characteristics and dimensions of a critical zone to prevent crushing of an operator during roll-over.

Dates of Approval and Further Availability

The incorporation by reference of materials from the ATS, ILO, FHWA, and ISO is approved by the Director of the Federal Register as of July 15, 2019. The incorporation by reference of the various SAE standards in 29 CFR part 1926, subpart W, was approved by the Director of the Federal Register before January 6, 2015.

All approved material is available for inspection at the OSHA Docket Office (U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3508, Washington DC 20210; telephone 202–693–2350) and is available from the sources listed in 29 CFR 1910.6, 29 CFR 1915.5, and 29 CFR 1926.6. The material is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *www.archives.gov/federal-register/cfr/ibr-locations.html.*

Table of Contents

I. Executive Summary

OSHA is making 14 revisions to existing standards in the recordkeeping, general industry, maritime, and construction standards. The purpose of the Standards Improvement Project (SIP) is to remove or revise outdated, duplicative, unnecessary, and inconsistent requirements in OSHA's safety and health standards, which will permit better compliance by employers and reduce costs and paperwork burdens where possible, without reducing employee protections. In fact, many of the revisions in this rulemaking reduce costs while improving worker safety and health or privacy. OSHA is conducting SIP–IV in response to the President's Executive Order 13563, ''Improving Regulations and Regulatory Review'' (76 FR 3821), and consistent with Executive Order 13777, ''Enforcing the Regulatory Reform Agenda'' (82 FR 12285). The revisions include an update to the consensus standard incorporated by reference for signs and devices used to protect workers near automobile traffic, a revision to the requirements for roll-over protective structures to comply with current consensus standards, updates for storage of digital x-rays, and the method of calling emergency services to allow for use of current technology. OSHA is also revising two standards to align with current medical practice: A reduction to the number of necessary employee x-rays and updates to requirements for pulmonary function testing. To protect employee privacy and prevent identity fraud, OSHA is also removing from the standards the requirements that employers include an employee's social security number (SSN) on exposure monitoring, medical surveillance, and other records.

SIP rulemakings are reasonably necessary under the Occupational Safety and Health Act of 1970 (OSH Act; 29 U.S.C. 651 et al.) to provide cost savings, or eliminate unnecessary requirements. The agency estimates cost savings and paperwork reductions for SIP rulemakings. The agency estimates that one revision (updating the method of identifying and calling emergency medical services) may increase construction employers' combined costs by about $32,000 per year while two provisions (reduction in the number of necessary employee x-rays and elimination of posting requirements for residential construction employers) provide estimated combined cost savings of $6.1 million annually. This final rule is considered an Executive Order (E.O.) 13771 deregulatory action. Details on OSHA's cost/cost savings estimates for this final rule can be found in the rule's Final Economic Analysis and Final Regulatory Flexibility Act Analysis in this preamble. OSHA has estimated that, at a discount rate of 3 percent over 10 years, 7 percent over 10 years, or 7 percent over a perpetual time horizon, this final rule yields net annual cost savings of $6.1 million per year.

The agency has not estimated or quantified benefits to employees from reduced exposure to x-ray radiation or to employers for the reduced cost of storing digital x-rays rather than x-ray films. The agency has concluded that the revisions are economically feasible and do not have any significant economic impact on small businesses. The Final Economic Analysis in this preamble provides an explanation of the economic effects of the revisions.

II. Background

The purpose of the SIP–IV rulemaking is to remove or revise outdated, duplicative, unnecessary, and inconsistent requirements in OSHA's safety and health standards. The agency believes that improving OSHA standards will increase employers' understanding of their obligations, which will lead to increased compliance, improved employee safety and health, and reduced compliance costs.

In 1995, in response to a Presidential memorandum to improve government regulation,[1] OSHA began a series of rulemakings designed to revise or remove standards that were confusing, outdated, duplicative, or inconsistent. OSHA published the first rulemaking, ''Standards Improvement Project, Phase I'' (SIP–I) on June 18, 1998 (63 FR 33450).[2] Two additional rounds of SIP rulemaking followed, with final SIP rules published in 2005 (SIP–II) (70 FR 1111) and 2011 (SIP–III) (76 FR 33590).[3]

As stated above, the President's Executive Order 13563 (E.O.), ''Improving Regulations and Regulatory Review,'' establishes the goals and criteria for regulatory review, and requires agencies to review existing standards and regulations to ensure that these standards and regulations continue to protect public health, welfare, and safety effectively, while promoting economic growth and job creation. The E.O. encourages agencies to use the best, least burdensome means to achieve regulatory objectives, to perform periodic reviews of existing standards to identify outmoded, ineffective, or burdensome standards,

[1] Clinton, W.J., Memorandum for Heads of Departments and Agencies. Subject: Regulatory Reinvention Initiative. March 4, 1995.

[2] Revisions made by the SIP–I rulemaking included adjustments to the medical-surveillance and emergency-response provisions of the Coke Oven Emissions, Inorganic Arsenic, and Vinyl Chloride standards, and removal of unnecessary provisions from the Temporary Labor Camps standard and the textile industry standards.

[3] In the final SIP–II rule published in 2005 (70 FR 1111), OSHA revised a number of provisions in its health and safety standards identified as needing improvement either by the Agency or by commenters during the SIP–I rulemaking. These included updating or removing notification requirements from several standards, updating requirements for first aid kits to reflect newer consensus standards, updating requirements for laboratories analyzing samples under the vinyl chloride standard, and making worker exposure monitoring frequencies consistent under certain health standards, among other things. The final SIP–III rule, published in 2011 (76 FR 33590), updated consensus standards incorporated by reference in several OSHA rules, deleted provisions in a number of OSHA standards that required employers to prepare and maintain written training-certification records for personal protective equipment, revised several sanitation standards to permit hand drying by high-velocity dryers, and modified OSHA's sling standards to require that employers use only appropriately marked or tagged slings for lifting capacities.

and to modify, streamline, or repeal such standards when appropriate. The agency believes that the SIP rulemaking process is an effective means to improve its standards.

OSHA advised the Advisory Committee for Construction Safety and Health (ACCSH) at a public meeting held on December 16, 2011, that it intended to review its standards under the SIP criteria, with particular emphasis on construction standards. A transcription of these proceedings (ACCSH Transcript) is available at Docket No. OSHA–2011–0124–0026.

Recognizing the importance of public participation in the SIP process, the agency published a Request for Information (RFI) on December 6, 2012 (77 FR 72781), asking the public to identify standards that were in need of revision or removal, and to explain how such action would reduce regulatory burden while maintaining or increasing the protection afforded to employees. The agency received 26 comments in response to the RFI. Several of the revisions in this rule were recommended in the public comments received in response to the RFI. Other revisions were identified by the agency's own internal review and by ACCSH.

On October 4, 2016, OSHA published a Notice of Proposed Rulemaking (NPRM) titled ''Standards Improvement Project—Phase IV'' (81 FR 68504). The period for submitting comments was originally 60 days and was extended by 30 days to allow parties affected by the rule more time to review the proposed rule and collect information and data necessary for comments. The comment period ended on January 4, 2017.[4]

OSHA received around 700 submissions on the proposed rulemaking, with many of the submissions containing comments on more than one of the proposed revisions. The proposed revision to the shipyards standard to remove ''feral cats'' from the definition of ''vermin'' received over 500 comments in support. The proposed revision to the lockout/tagout standard in general industry received about 150 comments against and seven in favor. The remaining comments cover the other proposed revisions. All significant issues raised in the comments are discussed in the Summary and Explanation of the Final Rule.

OSHA is moving forward with 14 revisions in its recordkeeping, general industry, maritime, and construction standards. OSHA is not moving forward with proposed revisions to the lockout/tagout general industry standard, personal protective equipment fit in construction, the excavation construction standard, or the decompression tables in the underground construction standard. OSHA received requests for a hearing on the proposal regarding the lockout/tagout standard from some commenters that were opposed to that proposal. In light of the information provided by the comments, OSHA is not in a position at this time to make a final decision on this issue. As a result, the agency will further consider this issue in light of the overall standard. As OSHA is not moving forward with the proposed changes to the lockout/tagout standard, the agency determined that a hearing was not required. OSHA describes the revisions, including changes from the proposal and decisions not to move forward on four proposals, in detail in section III, Summary and Explanation of the Final Rule.

III. Summary and Explanation of the Final Rule

A. Revision in Occupational Injuries and Illnesses Recording and Reporting Standards (29 CFR Part 1904)

Subpart C—Recording Forms and Recording Criteria, Recording Criteria for Cases Involving Occupational Hearing Loss in 29 CFR 1904.10

OSHA proposed to revise § 1904.10(b)(6) of the Recordkeeping rule with language that will assist employers to comply with requirements for recording hearing loss. Title 29 CFR 1904.5 applies to the determination criteria for work-relatedness of all occupational injuries and illnesses, including hearing loss. OSHA proposed adding a cross-reference to this section to clarify requirements for physicians or other licensed health care professionals (PLHCPs) when making a determination of work-relatedness for cases of hearing loss. The final rule is identical to the proposal.

The addition of the cross-reference simply emphasizes the pre-existing requirement that, if an event or exposure in the work environment either caused or contributed to the hearing loss, or significantly aggravated a pre-existing hearing loss, the PLHCP, just as anybody else evaluating a case involving hearing loss, must consider the case to be work-related. Ultimately, the employer is responsible for ensuring that the PLHCP applies the analysis in § 1904.5 when evaluating work-related hearing loss, if the employer chooses to rely on the PLHCP's opinion in determining recordability.

Commenters who opposed the addition of this cross-reference at § 1904.10(b)(6) represented employers in manufacturing and construction sectors. These commenters stated that if OSHA intended for § 1904.5, specifically the presumption of work-relatedness, to apply to occupational hearing loss cases, the rulemaking to revise the hearing loss provisions in the rule on recording and reporting occupational injuries and illnesses in 2002 should have contained this explicitly (Occupational Injury and Illness Recording and Reporting Requirements, 67 FR 44037 (July 1, 2002)). (See discussion of specific comments below.) However, OSHA notes that the existing regulatory text of § 1904.10(b)(5) already confirms this where it states, ''You must use the rules in § 1904.5 to determine if the hearing loss is work-related.'' The addition of the new cross-reference is merely to reduce any existing confusion. OSHA has received compelling evidence from commenters representing workers' unions and the field of audiology that there is confusion about the interpretation of § 1904.10(b)(6) and what definition of work-relatedness applies. The agency believes that the simple addition of this cross-reference to another existing requirement adds clarity for PHLCPs and employers, and after considering the comments on this proposal, OSHA has decided to add the cross-reference to § 1904.5 in § 1904.10(b)(6).

Several commenters expressed support for OSHA's proposed cross-reference to § 1904.5 in § 1904.10(b)(6). The Laborers' Health & Safety Fund of North America (LHSFNA) and North America's Building Trades Union (NABTU) stated that hearing loss among construction workers is severely underreported (OSHA–2012–0007–0742, –0757). NABTU cited the CPWR Center for Construction Research and Training's Fifth Edition of the Construction Chart Book which suggests that rates of hearing loss in the construction industry are elevated significantly beyond the 1,400 cases that BLS reported from 2004 to 2010:

> Since employers have no obligation to test workers' hearing (audiometric testing) in construction, even if employees experience noise levels at or above OSHA's PEL, hearing loss in construction is rarely recognized as an

[4] The NPRM was also consistent with Executive Order 13777, ''Enforcing the Regulatory Reform Agenda'' (82 FR 12285). That Executive Order requires each agency's Regulatory Reform Task Force to identify regulations for ''repeal, replacement, or modification'' that, among other things, ''eliminate jobs, or inhibit job creation;'' ''are outdated, unnecessary, or ineffective;'' or ''impose costs that exceed benefits.'' *Id.* section 3(d). In OSHA's view, the regulatory provisions identified in the NPRM met those criteria for repeal, replacement, or modification.

occupational disease. It is not surprising, therefore, that the numbers reported to the BLS show a very low rate of hearing loss, and for this reason hearing loss data for construction are not comparable with data for general industry.

(OSHA–2012–0007–0781). The CPWR Chart Book notes that in the 7 years between 2004 and 2010, the BLS reported 1,400 cases of hearing loss in construction. They contrasted this number with hearing data that are collected by the National Health Interview Survey (NHIS), a large household survey in the U.S. In the NHIS Survey, at least one in five (21.4%) construction workers self-reported some hearing trouble in 2010 (chart 49b). The CPWR Chart Book indicates that this is nearly one-third higher than the proportion of workers with hearing trouble for all industries combined (16.3%). Id.

NABTU stated that the addition of the cross-reference would clarify that a PLHCP has the same responsibilities in evaluating whether hearing loss is work-related as in evaluating any other workplace injury or illness. NABTU added that OSHA's proposed revision to § 1904.10 would provide consistency between standards, and that the clarification would serve to improve reporting of work-related hearing loss (OSHA–2012–0007–0742).

The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, and Allied Industrial and Service Workers International Union (USW) also supported the addition of the cross-reference. USW described a case involving USW members in which a health care professional consistently ruled that cases of hearing loss were not occupational, even though those workers had experienced high workplace noise levels for years. Each case was instead attributed to loud music, firing a gun while hunting, or some other non-occupational cause (OSHA–2012–0007–0764).

The AFL–CIO stated that:

> It appears that many employers are misinterpreting the current language in section 1904.10(b)(6) to allow a physician to use different criteria for determining work-relatedness than are set forth in section 1904.5 of the regulation. This proposal will help to make clear that physicians and other health care professionals must apply the criteria in section 1904.5 of the recordkeeping rule in making determinations whether hearing loss is work-related for the purposes of recording the case on the OSHA 300 log. The recording of such cases will help identify jobs and operations where workers are exposed to excessive levels of noise and assist in efforts to control these exposures to prevent further risk to workers.

(OSHA–2012–0007–0761).

Dr. Alice Suter, Ph.D., provided a link to a position paper from the National Hearing Conservation Association (NHCA), ''NHCA Guidelines on Recording Hearing Loss on the OSHA 300 Log.'' It states:

> Professional reviewers commonly report pressure by their clients to make a determination that an STS [Standard Threshold Shift] is not recordable. Some have been questioned and challenged on every case they have identified as work-related. Others are unsure of their obligations under the OSHA regulations . . . To the extent that STSs are minimized because of reluctance to report them, workers are not getting the necessary counseling, hearing protector checking, and noise control remedies that could prevent further hearing loss.

(OSHA–2012–0007–0767).

In her comments, Dr. Suter stated that (a) the definition of an STS is quite lenient—so any STS is already a significant shift in hearing threshold level; (b) to qualify for recordability, the hearing loss must first exceed a hearing threshold level of 25dB, which is quite a significant level itself; and (c) to be in a hearing conservation program and to have one's hearing tested, workers are, by definition, exposed to levels of 85 dBA or above, where the risk of noise-induced hearing loss is well-known (OSHA–2012–0007–0767).

Several associations representing employer interests in manufacturing and construction industries expressed opposition to this revision. The Construction Industry Safety Coalition (CISC) and the Coalition for Workplace Safety (CWS) believed that the addition of a reference to § 1904.5 at § 1904.10(b)(6) would substantively change the requirements for recording occupational hearing loss cases (OSHA–2012–0007–0753 and –0756). This cross-reference creates no new requirement. In fact, the same cross-reference to § 1904.5 already exists in the language of § 1904.10(b), which is adjacent and immediately prior to § 1904.10(b)(6). Section 1904.10(b)(5) requires the employer to employ the rules of § 1904.5 to ascertain if the hearing loss is work related. The provision also states that the hearing loss must be considered work related if an event or exposure in the work environment either caused or contributed to the hearing loss, or significantly aggravated a pre-existing hearing loss.

The addition of the very same cross-reference in § 1904.10(b)(6) merely ensures consistency between provisions, provides clarity for PLHCPs in the assessment and determination of hearing loss cases, and in no way alters interpretation of the existing regulations under part 1904.

Section 1904.5(a) states that an injury or illness is to be considered work-related if an event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing injury or illness. Work-relatedness is presumed for injuries and illnesses resulting from events or exposures occurring in the work environment, unless an exception in § 1904.5(b)(2) specifically applies. Section 1904.5(b)(1) defines the work environment as ''the establishment and other locations where one or more employees are working or are present as a condition of their employment.'' OSHA sometimes refers to this presumption for injuries and illnesses that occur in the work environment to be work-related as the ''geographical presumption.'' In their comments, CISC and CWS noted that in OSHA's 2002 preamble to the revision of § 1904.10, the agency stated:

> OSHA agrees . . . that it is not appropriate to include a presumption of work-relatedness for hearing loss cases to employees who are working in noisy work environments. It is possible for a worker who is exposed at or above the 8-hour 85 dBA action levels of the noise standard to experience a non-work-related hearing loss, and it is also possible for a worker to experience a work-related hearing loss and not be exposed to those levels.

(OSHA–2012–0007–0753 and –0756 (quoting 67 FR 44037, 44045)). This statement was not addressing the geographic presumption of § 1904.5, but a different presumption—that of work-relatedness whenever the employee was exposed to noise of 85 dBA or greater, as in the 2001 revision of § 1904.10(b)(5). The current regulations do not contain a presumption that hearing loss is work-related when the work environment is loud (85 dBA or greater). The clarification to § 1904.10(b)(6) does not, and could not, create such a presumption.

OSHA clarified in the 2002 rulemaking that § 1904.5 is to be followed when making work-relatedness determinations. 67 FR 44037, 44045. The 2001 version of § 1904.10(b)(5) had created a special rule for noise exposure in the workplace, providing that hearing loss is presumed to be work-related if the employee is exposed to noise in the workplace at an 8-hour time-weighted average of 85 dBA or greater, or to a total noise dose of 50 percent, as defined in 29 CFR 1910.95. For hearing loss cases where the employee is not exposed to this level of noise, the rules in § 1904.5 must be used to determine if the hearing loss is work-related.

Occupational Injury and Illness Recording and Reporting Requirements, 66 FR 5916, 6129 (Jan. 19, 2001). But in 2002, OSHA abandoned the special rule and reverted to treating the determination of work-relatedness of hearing loss as it does for any other injury or illness under the recordkeeping rule: ''Therefore, the final rule states that there are *no special rules* for determining work-relationship and restates that *the rule's overall approach to work-relatedness*—that a case is work-related if one or more events or exposures in the work environment either caused or contributed to the hearing loss, or significantly aggravated a pre-existing hearing loss.'' 67 FR at 44045 (emphasis added). The text of § 1904.10(b)(5) confirms this: ''You must use the rules in § 1904.5 to determine if the hearing loss is work-related.''

OSHA maintains that indeed it is not appropriate to include an outright presumption of work-relatedness for hearing loss cases. For example, as stipulated at § 1904.5(b)(2)(ii), if an employee in a high-noise work environment meets the recording criteria for hearing loss, but a physician discovers that the employee has an inner ear infection that is entirely responsible for the loss, the case would not be considered work-related. OSHA has consistently interpreted § 1904.10(b)(6) this way since 2001:

> [T]he provisions allowing for review by a physician or other licensed health care professional allow for the exclusion of hearing loss cases that are not caused by noise exposure, such as off the job traumatic injury to the ear, infections, and the like. OSHA notes that this presumption is consistent with a similar presumption in OSHA's Occupational Noise standard (in both cases, an employer is permitted to rebut this presumption if he or she suspects that the hearing loss shown on an employer's audiogram in fact has a medical etiology and this is confirmed by a physician or other licensed health care professional).

66 FR 5916, 6012. The addition of a cross-reference in § 1904.10(b)(6) adds no new requirement and merely clarifies the existing requirements for PLCHPs, and ultimately employers, in hearing loss case determinations.

The Graphic Arts Coalition (GAC) submitted comments stating that the revision, as proposed, would significantly expand the employer's responsibility for hearing loss that may have just as easily been incurred through workers' off-duty behaviors including the use of ''ear buds'' or headphones, power tools, lawn mowers, chain saws, or attendance at music or sporting events. GAC stated that this revision would negate workers' non-workplace noise exposures, and increase OSHA recordables and enforcement actions unfairly (OSHA–2012–0007–0737).

But for a case to be presumed work-related, there must be a *causal* connection between the injury or illness and an event or exposure at work. This does not mean that work factors must outweigh non-work factors in causing the injury, or that work factors must be quantifiable, *e.g.,* a 10% or 20% cause, or that work factors must be ''significant.'' Causality for OSHA recordkeeping purposes is established if work is a cause. In order to further clarify the issue of work-relatedness, in 2001, OSHA entered into a settlement agreement with the National Association of Manufacturers (NAM) to resolve NAM's challenge to the 2001 recordkeeping final rule. The settlement agreement states that ''a case is presumed work-related if, and only if, an event or exposure in the work environment is a discernable cause of the injury or illness or of a significant aggravation to pre-existing condition. The work event or exposure need only be one of the discernable causes; it need not be the sole or predominant cause.'' Settlement Agreement: Occupational Injury and Illness Recording and Reporting, 66 FR 66943, 66944 (Dec. 27, 2001). As a result, the geographic presumption treats a case as work-related if work is one cause, even if there are also other non-work causes. However, there must be a causal relationship between the injury or illness and a work event; there is no presumption that an injury is work-related simply because it occurs at work (see § 1904.5(b)(2)).

GAC and Formosa Plastics also disagreed specifically with the use of language from Compliance Directive CPL 02–00–135 in the proposed rule preamble, with GAC stating that by incorporating language from a compliance directive into the standard, OSHA would in effect be turning guidance into a requirement (OSHA–2012–0007–0737, –6333). OSHA disagrees. The only revision of the regulatory text is to add the cross-reference to the existing regulatory provision at § 1904.5. OSHA is adding this cross-reference through the use of notice-and-comment rulemaking, in this Standards Improvement Project-IV rulemaking, which is the proper and appropriate way to make changes to the CFR. This cross-reference adds no new requirement for employers, removes ambiguity, and adds clarity to OSHA enforcement policy already currently in place.

The Flexible Packing Association and Bemis Company also submitted comments that emphasized that to enter a hearing conservation program, an employee must be exposed to an 8-hour time-weighted average sound level of 85 dBA or higher (OSHA–2012–0007–0765, –6338). That is correct, under 29 CFR 1910.95(c)(1), and is not being changed by this rulemaking.

The American Petroleum Institute commented that it had no concerns about the proposed cross-reference, but it did have concerns about the language of the compliance directive (OSHA–2012–0007–0766). The only change being made here is the addition of a cross-reference to § 1904.5.

Some organizations that were generally supportive of the cross-reference felt that it could be improved by the addition of further language. The USW suggested that the cross-reference also be included in the occupational noise exposure standard at § 1910.95(g)(8)(ii), as follows: ''. . . unless a physician determines ***in accord with Section 1904.5*** that the standard threshold shift is not work-related or aggravated by occupational noise exposure . . . (bolded italics added)'' (OSHA–2012–0007–0764). While OSHA appreciates that suggestion, OSHA is not making any changes to the occupational noise standard that were not proposed in the SIP–IV NPRM.

NIOSH felt that consistency may not be accomplished by simply cross-referencing to § 1904.5, because § 1904.5 differs in some respects from the compliance directive. It is OSHA's regulations that are enforceable, and OSHA is only adding the cross-reference to the existing regulatory definition of work-relatedness here.

NIOSH also made the distinction that:

> § 1904.5 states that determination of whether work ''significantly aggravated'' a pre-existing illness or injury is made when the work exposure causes one of the following (which would not have occurred simply from the pre-existing condition):
>
> i. Death
> ii. Loss of consciousness
> iii. One or more days away from work, or days of restricted work, or days of job transfer
> iv. Medical treatment or a change in medical treatment.
>
> Occupational noise exposure does not cause i–iv and cross referencing to § 1904.5 may be confusing.

(OSHA–2012–0007–0726). OSHA agrees that § 1904.5(b)(4), which NIOSH cited, is not applicable to hearing loss. However, as explained above, § 1904.10(b)(5) already requires analysis under § 1904.5. OSHA will not be

adding language beyond the cross-reference to the text of § 1904.10(b)(6), and the final text is identical to the proposed text.

B. Revisions in General Industry Standards, Shipyard Standards, and Construction Standards (29 CFR Parts 1910, 1915, and 1926)

1. Subpart Z of Parts 1910, 1915, and 1926—Toxic and Hazardous Substances, Asbestos in 29 CFR 1910.1001, Inorganic Arsenic in 29 CFR 1910.1018, Cadmium in 29 CFR 1910.27, Coke Oven Emissions in 29 CFR 1910.29, Acrylonitrile in 29 CFR 1910.1045, Asbestos in 29 CFR 1915.1001, Asbestos in 29 CFR 1926.1101, Cadmium in 29 CFR 1926.1127.

OSHA proposed three revisions. The first revision was to remove the requirement in several of its standards that employers provide periodic chest X-rays (CXR) to screen for lung cancer. The final rule retains that proposed revision without change. The second revision was to allow employers to use digital radiography and other reasonably-sized standard films for X-rays. The final rule retains that proposed revision without change. The third revision was to update terminology and references to the International Labour Organization (ILO) guidelines included in its asbestos standards (81 FR 68504, 68507–68511). The final rule's language is nearly the same as that originally proposed, but with some minor changes to respond to concerns raised by NIOSH.

Several OSHA standards currently require periodic CXR to screen exposed workers for lung cancer. Since these standards were promulgated, however, large studies with many years of follow-up have not shown a benefit of CXR screening in reducing either lung cancer incidence or mortality (see 81 FR at 68507–68511). As a result, OSHA proposed removing the requirement for periodic CXR in the following standards: 29 CFR 1910.1018, Inorganic Arsenic; § 1910.1029, Coke Oven Emissions; and § 1910.1045, Acrylonitrile. OSHA did not propose to remove the requirement for a baseline CXR in these, or any other, standards, as baseline CXR at pre-placement or at the initiation of a medical surveillance program provides benefits to workers exposed to lung carcinogens, their employers, and healthcare professionals evaluating these workers (see 81 FR at 68509). OSHA also did not propose removing the CXR requirements in standards where CXR is used for purposes other than screening for lung cancer. For example, OSHA is retaining the CXR requirements in the asbestos standards (§§ 1910.1001, 1915.1001, and 1926.1101) to continue screening for asbestosis. OSHA proposed adding the text, ''Pleural plaques and thickening may be observed on chest X-rays'' in the non-mandatory appendix H of the general industry asbestos standard (§ 1910.1001), as well as the parallel appendices in the Maritime and Construction asbestos standards (§ 1915.1001, appendix I; § 1926.1101, appendix I) (see 81 FR at 68564, 68662, 68684).

OSHA also proposed updating the CXR requirements to allow, but not require, the use of digital CXRs, also referred to as digital radiographs, in the medical surveillance provisions of its inorganic arsenic (§ 1910.1018), coke oven emissions (§ 1910.1029), and acrylonitrile (§ 1910.1045) standards discussed above, and its asbestos (§§ 1910.1001, 1915.1001, 1926.1101) and cadmium (§§ 1910.1027 and 1926.1127) standards. Digital radiography systems are rapidly replacing traditional analog film-based systems in medical facilities, and both the ILO and the National Institute for Occupational Safety and Health (NIOSH) recently published guidelines for digital radiographs (see 81 FR at 68509). In addition, OSHA proposed allowing other reasonably-sized standard X-ray films, such as the 16 inch by 17 inch size, to be used in addition to the 14 inch by 17 inch film specified in some standards. This proposed change would affect the acrylonitrile (§ 1910.1045), inorganic arsenic (§ 1910.1018), coke oven emissions (§ 1910.1029), and asbestos (§§ 1910.1001, 1915.1001, and 1926.1101) standards. Updating this requirement, as proposed, would ensure consistency across standards as well as conformance with current medical practice (81 FR at 68510).

Lastly, OSHA proposed replacement of ''roentgenogram'' with ''X-ray'' to reflect current terminology and corrections to remove references to semi-annual exams for certain employees in the coke oven emissions appendices (§ 1910.1029, app. A(VI) and app. B(II)(A)), as these exams were eliminated in the second SIP rulemaking (70 FR 1112). OSHA also proposed making changes to conform to the language used in the ILO's ''Guidelines for the use of the ILO International Classification of Radiographs of Pneumoconioses,'' which refers to a classification system as applying to CXR, while interpretation refers to the information translated by the physician to the employer. The proposed revisions clarified that classification must be in accordance with the ILO classification system (rather than ''a professionally accepted Classification system'') according to the Guidelines for use of the ILO International Classification of Radiographs of Pneumoconioses (revised edition 2011) in appendix E of each of the three asbestos standards (81 FR at 68510).

Comments and Responses on Removing the Requirement To Provide Periodic CXR To Screen for Lung Cancer

OSHA received several comments supporting the proposal to remove the periodic CXR requirement for lung cancer screening from the inorganic arsenic (§ 1910.1018), coke oven emissions (§ 1910.1029), and acrylonitrile (§ 1910.1045) standards. These comments came from organizations representing labor, industry, and NIOSH.

Among labor unions, the Laborers' Health & Safety Fund of North America (LHSFNA) noted, ''Chest X-rays are of very little value in lung cancer cases'' (OSHA–2012–0007–0757). Similarly, the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW) stated, ''There is no evidence that ordinary chest x-rays can detect lung cancer in time to affect mortality'' (OSHA–2012–0007–0764). The USW noted that low-dose computed tomography (LDCT), unlike CXR, can detect lung cancer while treatable, but brings with it the risk of increased radiation exposure and false positive results. USW further stated that better equipment and protocols have helped with the latter two problems, and that LDCT will continue to improve (OSHA–2012–0007–0764). The USW recommended that OSHA consider adopting LDCT in the future for high-risk populations (OSHA–2012–0007–0764).

North America's Building Trades Unions (NABTU) agreed with OSHA's proposal to remove the periodic CXR requirement, writing, ''We agree that it is long past time to remove requirements for CXRs for the screening detection of lung cancer, since they have no benefit and offer only harm'' (OSHA–2012–0007–0742). With regard to LDCT, however, NABTU stated that OSHA should replace the CXR requirement with a carefully-monitored LDCT screening requirement:

[W]hile 'OSHA will continue to monitor the literature on [whether to continue to require] baseline Chest X-rays', the agency offers no similar assurance about other forms of screening for lung cancer and, in particular, includes an inadequate assessment of the

benefits of LDCT. After citing a Cochran review that is 3 years old and opining that it may take NIOSH years to come up with recommendations, OSHA effectively absolves employers from any requirement to offer an intervention that has been demonstrated to save lives. This clearly violates the intent of the standards and raises the concern that OSHA intends to wait another 30 years before making needed updates.

(OSHA–2012–0007–0742).

NABTU further stated that OSHA is ''repeating the mistakes that lead to the CXR requirements and this overdue standard improvement'' and should ensure that current medical input is considered in this standard improvement (OSHA–2012–0007–0742). NABTU asserted that LDCT screening for lung cancer has been endorsed by most relevant medical organizations, as prospective studies have demonstrated LDCT to be an effective lung screening method (OSHA–2012–0007–0742). Recognizing the potential for unnecessary biopsies and surgical interventions from LDCT screening, NABTU advocated for LDCT screening only for workers with sufficient smoking history and a history of occupational lung carcinogen exposure (OSHA–2012–0007–0742). NABTU cited the Building Trades National Medical Screening Program (BTMed) as an example, which screens former Department of Energy (DOE) construction workers for lung cancer with LDCT if they meet the following criteria: Age between 50 to 79 years; five years of employment at a DOE site; smoking history of 20 pack-years (number of cigarette packs per day times number of years smoked) or evidence of asbestosis on CXR; and not recently treated for cancer. The findings among 1,300 scanned workers have included 15 Stage 1 lung cancers, two Stage 2 lung cancers, and six Stage 4 lung cancers (OSHA–2012–0007–0742). Based on these data, NABTU urged OSHA to adopt an LDCT screening requirement using the criteria from the BTMed program, and to collaborate with NIOSH and the National Cancer Institute (NCI) to continue to evaluate outcomes and modify LDCT screening requirements (OSHA–2012–0007–0742). NABTU also submitted to the record guidance from the Finnish Institute of Occupational Health (FIOH) and the Lung Cancer Alliance on LDCT screening for asbestos workers (OSHA–2012–0007–0742, Attachments 4 and 5, respectively).

OSHA acknowledges the concerns of NABTU about not replacing the periodic CXR requirement with an appropriate intervention for lung cancer screening. OSHA also appreciates the data shared from the BTMed Program, which appeared to show LDCT as a useful tool for lung cancer detection. However, OSHA believes that the utility of LDCT in occupational lung cancer screening remains a complex issue, as the agency is not aware of any definitive LDCT screening recommendations based upon a large, randomized, controlled study of workers. Instead, the screening recommendations have stemmed from a study of smokers (*i.e.,* the National Lung Screening Trial), as referenced by NABTU (see Aberle, et al., 2011) (OSHA–2012–0007–0742, Attachment 3).

The National Lung Screening Trial enrolled asymptomatic men and women (n=53,454), aged 55 to 74, that were current smokers or former smokers within the last 15 years and had a smoking history of at least 30 pack-years. The participants underwent annual lung cancer screening with either LDCT or chest radiography for three years. The results showed a statistically significant 20 percent relative reduction in lung cancer mortality with LDCT screening (Aberle, et al., 2011) (OSHA–2012–0007–0742, Attachment 3). However, the trial also showed that LDCT screening results in a high false-positive rate; 24.2 percent of the total LDCT screening tests were classified as positive, with 96.4 percent of these positive results ultimately being false positives. In addition, 39.1 percent of the 26,722 (or about 10,450) participants in the LDCT screening group had at least one positive screening result during the study (Aberle, et al., 2011) (OSHA–2012–0007–0742, Attachment 3). Given that only 649 cancers were diagnosed after a positive screening test, and assuming that each of these cancers was in a different participant, it follows that only 6.2 percent of those with at least one positive test were ultimately diagnosed with lung cancer. This means that 36.7 percent of participants in the LDCT screening group had at least one false positive result. Most positive initial screening results in the National Lung Screening Trial—many of which were false positives—were followed up with a diagnostic evaluation that included further imaging and, infrequently, invasive procedures (Aberle, et al., 2011) (OSHA–2012–0007–0742, Attachment 3). The authors noted potentially harmful effects that could result, including overdiagnosis and the development of radiation-induced cancer (Aberle, et al., 2011) (OSHA–2012–0007–0742, Attachment 3).

Based on these findings of the National Lung Screening Trial, the U.S. Preventive Services Task Force (USPSTF), an independent, volunteer panel of national experts in prevention and evidence-based medicine, recommended annual screening for lung cancer with LDCT for adults aged 55 to 80 years with a 30 pack-year smoking history and who either currently smoke or have quit within the past 15 years. Under USPSTF's criteria, screening should be discontinued once a person has not smoked for 15 years or develops a health problem that substantially limits life expectancy or the ability or willingness to have curative lung surgery (Moyer et al., 2014) (OSHA–2012–0007–0032). However, given the high false positive rate and subsequent imaging and resulting radiation dose in the National Lung Screening Trial, the USPSTF also noted that lung cancer screening with LDCT is not without harm:

> The benefit of screening varies with risk because persons who are at higher risk because of smoking history or other risk factors are more likely to benefit. Screening cannot prevent most lung cancer deaths, and smoking cessation remains essential. Lung cancer screening has substantial harms, most notably the risk for false-positive results and incidental findings that lead to a cascade of testing and treatment that may result in more harms, including the anxiety of living with a lesion that may be cancer. Overdiagnosis of lung cancer and the risks of radiation are real harms, although their magnitude is uncertain. The decision to begin screening should be the result of a thorough discussion of the possible benefits, limitations, and known and uncertain harms (Moyer, et al., 2014).

(OSHA–2012–0007–0032).

In addition to the USPSTF, several other organizations have recommended similar lung cancer screening protocols for high-risk smokers, including the American Cancer Society, American College of Chest Physicians, American Society of Clinical Oncology, American Lung Association, National Comprehensive Cancer Network, and the American Association for Thoracic Surgery. Each organization's specific screening recommendations are summarized by the U.S. Centers for Disease Control and Prevention: *www.cdc.gov/cancer/lung/pdf/guidelines.pdf.*

OSHA is not aware of any definitive recommendations based on a large, randomized, controlled study examining the benefit of lung cancer screening with LDCT among occupationally-exposed workers. NABTU supplied a report by the FIOH that recommended LDCT screening in asbestos-exposed individuals if their personal combination of risk factors yields a risk for lung cancer equal to that needed for entry into the National

Lung Screening Trial (OSHA–2012–0007–0742, Attachment 4). Similarly, as discussed by NABTU, the National Comprehensive Cancer Network (NCCN), a nonprofit alliance of 27 cancer centers, recommended screening for two high risk groups: (1) Current or former smokers within the last 15 years who are ages 55 to 74 years with a smoking history of 30 pack-years or more; or (2) individuals age 50 years or older with a smoking history of at least 20 pack-years and with one or more additional risk factors; these risk factors include a history of chronic obstructive pulmonary disease (COPD) or pulmonary fibrosis, a history of cancer, a family history of lung cancer, radon exposure, or occupational exposure to asbestos, arsenic, beryllium, cadmium, chromium (VI), nickel, silica, or diesel fumes (see *www.cdc.gov/cancer/lung/pdf/guidelines.pdf*). The former criteria are very similar to those recommended by the USPTF for heavy smokers, while the latter criteria are similar to those used in the NABTU BTMed program: Age 50 to 79 years, not recently treated for cancer, with five years of employment at a Department of Energy (DOE) site and either a 20 pack-year smoking history or evidence of asbestosis on CXR (OSHA–2012–0007–0742).

NABTU submitted to the record a study by McKee et al. (2015, OSHA–2012–0007–0742, Attachment 2) in which individuals meeting either NCCN group 1 or group 2 criteria (see above) were offered an LDCT screening scan between January 2012 and December 2013. The authors examined the lung cancer detection outcomes between the two groups, as ''[i]nclusion of the group 2 population into annual lung screening has generated controversy because this group was not formally evaluated in the NLST [National Lung Screening Trial] or other CT lung screening trials'' (OSHA–2012–0007–0742, Attachment 2). Of 1,760 persons scanned (1,296 in group 1 and 464 in group 2), there were 481 positive results (365 in group 1 and 116 in group 2). Follow-up data were available for 1,328 (75%) scanned individuals (997 in group 1 and 331 in group 2) and indicated 23 diagnosed cancers (17 in group 1 and six in group 2). Overall, the group 2 results were substantively similar to the group 1 results, for both the rate of positive results and the annualized cancer detection rates. The authors concluded that screening eligibility should be expanded to include group 2 (McKee et al., 2015) (OSHA–2012–0007–0472, Attachment 2).

While the published results of the McKee et al. study are somewhat encouraging for the potential future use of LDCT, OSHA notes that no information was provided about the false positive rate, subsequent imaging or invasive procedures, and cumulative radiation dose received. The 481 positive results among 1,760 persons screened indicates a total positive rate of 27 percent, the majority of which were likely false positives given the 23 diagnosed cancers among the 1,328 persons with follow-up data. In addition, it is unclear the extent to which persons in Group 2 were occupationally exposed, as only 24% (approximately 129) of the 538 persons in Group 2 were reported to have carcinogen exposure (see Fig. 3, OSHA–2012–0007–0472, Attachment 2). The carcinogen itself or the amount of exposure was not specified, and the majority of persons in Group 2 were instead included in the group based on having a history of a chronic lung disease or smoking-related cancer (see Fig. 3, OSHA–2012–0007–0472, Attachment 2). It is also unclear if any of the six people diagnosed with cancer in Group 2 had exposure to an occupational carcinogen. In addition, lung cancer mortality was not studied. Thus, OSHA maintains that additional research, specifically well-conducted, randomized, controlled studies of occupationally-exposed workers, is needed to establish the efficacy of LDCT screening for lung cancer among workers.

OSHA's position is further supported by the 2014 FIOH report, provided by NABTU (OSHA–2012–0007–0742, Attachment 4), and NIOSH. FIOH reviewed the literature on the efficacy of lung cancer screening with LDCT in asbestos-exposed workers, and concluded that lung cancer screening with LDCT should be considered for those persons with prior exposure to asbestos who are at or above the risk threshold (1.34% over 6 years) set for participation in the National Lung Screening Trial (OSHA–2012–0007–0742, Attachment 4). However, FIOH found that none of the risk calculators they examined showed a risk approaching the National Lung Screening Trial risk threshold for a 50-year-old man with a smoking history of 20 pack-years and occupational exposure to asbestos; the risk threshold was exceeded in one risk model for a 60-year-old man with a smoking history of 10 pack-years, asbestos exposure, and a family history of lung cancer (OSHA–2012–0007–0742, Attachment 4). It should be noted that asbestos exposure was not quantified in these risk calculators, with one model based on data from subjects with a minimum duration of five years of employment in an occupation at high risk for asbestos exposure, and the other model based on data from subjects with at least one year of asbestos exposure (OSHA–2012–0007–0742, Attachment 4). Although FIOH recommended that asbestos-exposed individuals be considered for LDCT lung cancer screening if their personal combination of risk factors, particularly smoking history, yields a risk of lung cancer at or above that needed for entry in the National Lung Screening Trial, FIOH also concluded:

> Much work remains to be done related to risk estimation for lung cancer screening eligibility, especially the interplay between age, smoking history, other exposures to tobacco smoke, and other risk factors such as occupational history or genetic predisposition. Going forward it is imperative that efforts are focused on answering these key questions about lung cancer risk, patient selection, and the benefits and harms of lung cancer screening in asbestos-exposed adults. (OSHA–2012–0007–0742, Attachment 4).

Industry support for the proposal came from the North American Insulation Manufacturers Association (NAIMA), representing the insulation industry (OSHA–2012–0007–0701). NAIMA noted that OSHA's proposal to remove the periodic CXR requirement for lung cancer screening would ''remove costly and burdensome requirements for some'' (OSHA–2012–0007–0701).

NIOSH submitted comments to the record supporting OSHA's proposal to remove the CXR requirement for lung cancer screening (other than an initial, baseline CXR) in various standards, re-affirming that ''current medical literature does not support the effectiveness of screening for lung cancer with periodic CXR'' (OSHA–2012–0007–0726). NIOSH also agreed with OSHA's assessment that existing evidence is insufficient to justify using alternative screening methods to CXR, that it may be years before research can provide a recommendation on the efficacy of LDCT screening, and that further research is needed on the risks associated with LDCT-associated radiation exposure occurring during a screening protocol for workers exposed to lung carcinogens in the workplace (OSHA–2012–0007–0726).

NIOSH encouraged OSHA to track new developments that may eventually justify requirements for lung cancer screening with LDCT in various standards, and pointed to the FIOH recommendations for asbestos-exposed workers, as discussed above (OSHA–2012–0007–0726). NIOSH suggested

that it may, in the future, be possible to conduct lung cancer screening with ultralow-dose computed tomography (CT) with radiation doses similar to conventional CXR (OSHA–2012–0007–0726), pointing to a recent study by Huber et al. (2016) (OSHA–2012–0007–0726, Attachment 3). In this study, the authors examined a lung phantom with multiple nodules of different sizes using both standard CT and ultralow-dose CT, and found that 93.3% of lung nodules were detected with ultralow-dose CT, compared with 95.5% with standard CT (OSHA–2012–0007–0726, Attachment 3). Additional post-processing of imaging improved the detection rate. The authors concluded that lung cancer screening with ultralow-dose CT is feasible, but also acknowledged that the use of a lung phantom was a ''major limitation'' (OSHA–2012–0007–0726, Attachment 3).

NIOSH suggested that OSHA, in potential future requirements for LDCT screening, consider setting different threshold levels of exposure to occupational carcinogens that trigger screening in nonsmokers compared to smokers (OSHA–2012–0007–0726). NIOSH also noted the importance of appropriate counseling in LDCT screening, as results often lead to repeat CT scans to evaluate changes in nodules over time (OSHA–2012–0007–0726).

OSHA agrees with NIOSH and its statements regarding the need for the agency to stay apprised of developments that may eventually justify the use of LDCT or ultralow-dose CT for lung cancer screening in workers. There are currently no definitive LDCT lung cancer screening recommendations based on a randomized, controlled trial of occupationally-exposed workers. Thus, OSHA believes that additional scientific study of lung cancer screening with LDCT for workers is needed. However, for this rulemaking, the currently available evidence on LDCT screening for lung cancer indicates a high rate of false positive results (as observed in the National Lung Screening Trial) that can lead to unnecessary follow-up and potential harms.

After considering these comments, OSHA has decided to delete the requirement for periodic CXR in 29 CFR 1910.1018, Inorganic Arsenic; § 1910.1029, Coke Oven Emissions; and § 1910.1045, Acrylonitrile. OSHA has also decided not to require the use of LDCT or ultralow-dose CT for periodic lung cancer screening in workers at this time.

Comments and Responses on Allowing Employers To Use Digital Radiography and Other Reasonably-Sized Standard Films for CXR

OSHA received many comments supporting the proposal to allow, but not require, the use of digital CXRs in the medical surveillance provisions of the inorganic arsenic (§ 1910.1018), coke oven emissions (§ 1910.1029), acrylonitrile (§ 1910.1045), asbestos (§§ 1910.1001, 1915.1001, 1926.1101), and cadmium (§§ 1910.1027 and 1926.1127) standards, and to allow the use of other reasonably-sized standard X-ray films. Support was received from NAIMA, NIOSH, NABTU, LHSFNA, and USW (OSHA–2012–0007–0701; –0726; –0742, –0757; and –0764). LHSFNA summarized, ''The past few years have brought rapid digitization to the medical industry. The proposed change to allow digital X-ray storage is a necessary consequence of changes in technology'' (OSHA–2012–0007–0757). There were no comments opposing the use of digital CXRs or other reasonably-sized standard X-ray films. After considering these comments, OSHA has decided to allow, but not require, the use of digital CXRs in the medical surveillance provisions of the standards listed.

Comments and Response on Updating Terminology and References to the ILO Guidelines

OSHA also received comments on the proposals to replace ''roentgenogram'' with ''X-ray'' to reflect current terminology, remove references to semi-annual exams for certain employees in the coke oven emissions appendices (§ 1910.1029, app. A(VI) and app. B(II)(A)), update language to refer to classification (not interpretation), consistent with the ILO Guidelines, and update references to the ILO guidelines in appendix E of each of the three asbestos standards. NAIMA expressed support for updating the terminology and references to the ILO guidelines in the asbestos standards (OSHA–2012–0007–0701). NABTU also expressed support for referencing the updated ILO guidelines (OSHA–2012–0007–0742). After considering these comments, OSHA has decided to finalize its proposals to replace ''roentgenogram'' with ''X-ray'' to reflect current terminology, to remove references to semi-annual exams for certain employees in the coke oven emissions appendices (§ 1910.1029, app. A(VI) and app. B(II)(A)), and to refer to only classification.

NIOSH expressed concern that the ILO's 2011 ''Classification of Radiographs of Pneumoconioses'' allows digital CXRs to be printed out as hard copies and then classified using the ILO's standard image films. NIOSH cited research suggesting that allowing this approach will significantly increase the apparent prevalence of small opacities (Franzblau, et al., 2009) (OSHA–2012–0007–0726, Attachment 4). In the proposal, OSHA recommended that radiographic facilities and physicians ''should'' follow the NIOSH Guidelines, ''Application of Digital Radiography for the Detection and Classification of Pneumoconiosis,'' and noted that NIOSH does not recommend using film-based ILO reference radiographs for comparison with digital chest images or printed hard copies of the images (81 FR at 68510). Instead, NIOSH recommended that OSHA require the use of the NIOSH Guidelines, which state that only ILO digital standard images should be used to classify digital CXRs. NIOSH noted that the Department of Labor (DOL) regulations already promulgated by the Office of Workers' Compensation Programs (OWCP) at 20 CFR part 718 are consistent with the NIOSH Guidelines (OSHA–2012–0007–0726).

OSHA has carefully considered this concern and believes that NIOSH has presented compelling evidence, in the research cited and within the OWCP regulation, that digital CXRs should not be printed as a hard copy and then compared to ILO film standard images. As such, OSHA has incorporated the reference to the 2011 ILO guidelines, but has added language reflecting NIOSH's concerns. Specifically, in appendix E to the asbestos standards (§§ 1910.1001, 1915.1001, and 1926.1101), OSHA has added a provision requiring that digitally-acquired chest X-rays be classified using a complete set of ILO standard digital chest radiographic images provided for use with the Guidelines for the Use of the ILO International Classification of Radiographs of Pneumoconioses (revised edition 2011). The classification of digitally-acquired chest X-rays must be performed based on the viewing of images displayed as electronic copies, and not based on the viewing of hard copy printed transparencies of the images. OSHA believes these edits to the regulatory language address NIOSH's concerns and are consistent with the DOL OWCP regulation.

In addition, NIOSH expressed concern that the regulatory language in appendix E of each of the three asbestos standards (§§ 1910.1001, 1915.1001, and 1926.1101) allows CXR classification by a ''B-Reader, a board eligible/certified

radiologist, or an experienced physician with known expertise in pneumoconiosis'' (see 81 CFR at 68563, 68661, and 68683). NIOSH suggested that OSHA either remove the ''experienced physician'' or more specifically define the type of expertise in pneumoconiosis that is required to qualify as an ''experienced physician'' and that would ensure such a physician is able to accurately classify CXRs using the ILO classification system (OSHA–2012–0007–0726). OSHA recognizes NIOSH's concern, and notes that in the new respirable crystalline silica standard, only B-Readers can classify x-rays. See 29 CFR 1910.1053(i)(2)(iii). However, this change to the asbestos standards was not proposed. OSHA will consider making this change in a future rulemaking.

Summary of Changes

As proposed, OSHA is removing the requirement for periodic CXR in the following standards: 29 CFR 1910.1018, Inorganic Arsenic; § 1910.1029, Coke Oven Emissions; and § 1910.1045, Acrylonitrile. OSHA is not removing the requirement for a baseline CXR in these, or any other, standards. OSHA is also not removing the CXR requirements in standards where CXR is used for purposes other than screening for lung cancer; for example, OSHA is retaining the CXR requirements in the asbestos standards (§§ 1910.1001, 1915.1001, and 1926.1101) to continue screening for asbestosis. OSHA is adding the text, ''Pleural plaques and thickening may be observed on chest X-rays'' in the non-mandatory appendix H of the general industry asbestos standard (§ 1910.1001), as well as appendix I of the maritime and construction asbestos standards (§§ 1915.1001 and 1926.1101, respectively).

OSHA is also updating the CXR requirements to allow, but not require, the use of digital CXRs in the medical surveillance provisions of the inorganic arsenic (§ 1910.1018), coke oven emissions (§ 1910.1029), and acrylonitrile (§ 1910.1045) standards, and the asbestos (§§ 1910.1001, 1915.1001, 1926.1101) and cadmium (§§ 1910.1027 and 1926.1127) standards. In addition, OSHA is allowing other reasonably-sized standard X-ray films, such as the 16 inch by 17 inch size, to be used in addition to the 14 inch by 17 inch film specified in some standards.

Finally, OSHA is replacing ''roentgenogram'' with ''X-ray'' to reflect current terminology and is also eliminating references to semi-annual exams for certain employees in the coke oven emissions appendices (§ 1910.1029, app. A(VI) and app. B(II)(A)), as these exams were eliminated in the second SIP rulemaking (70 FR 1112). In appendix E of each of its three asbestos standards, OSHA is updating terminology and clarifying that classification must be in accordance with the ILO classification system according to the Guidelines for the use of the ILO International Classification of Radiographs of Pneumoconioses (revised edition 2011). OSHA is also further specifying that only ILO standard digital chest radiographic images are to be used to classify digital CXRs, and that digital CXRs are not to be printed out as hard copies and then classified.

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2. Subpart Z of Part 1910—Toxic and Hazardous Substances, Cotton Dust in 29 CFR 1910.1043

OSHA proposed to update the lung-function testing requirements of its cotton-dust standard to align them with current practices and technology. The language of the final rule is slightly changed from that originally proposed in response to comments from NIOSH.

In 1978, OSHA promulgated the standard for occupational exposure to cotton dust at 29 CFR 1910.1043 because workers exposed to cotton dust are at risk of developing the respiratory disease byssinosis (43 FR 27350, June 23, 1978). As described in the preambles to the proposed and final rules, as well as in the preamble to the SIP–IV NPRM, byssinosis is characterized by a continuum of effects (41 FR 56497, 56500–56501, December 28, 1976; 43 FR 27352–27354; 81 FR 68511). The cotton dust standard contains medical-surveillance provisions at 29 CFR 1910.1043(h). These provisions require initial and periodic medical-surveillance examinations that include administration of a medical questionnaire to determine if workers are experiencing symptoms (§ 1910.1043(h)(2)(ii) and (h)(3)(i)). Medical surveillance requirements also include pulmonary function testing (*i.e.,* spirometry testing) to objectively measure lung function and to assess changes in lung function (§ 1910.1043(h)(2)(iii)).

To improve the accuracy and consistency of pulmonary function testing, OSHA mandated specific requirements in the cotton dust standard based on recommendations from the American Thoracic Society (ATS) and the National Institute for Occupational Safety and Health (NIOSH) (43 FR 27391; 29 CFR 1910.1043, appendix D). Since 1978, pulmonary function testing procedures and technology have evolved significantly, and some of the mandates in the cotton dust standard now are outdated. OSHA thus proposed in the SIP–IV NPRM (81 FR 68504) to update the lung function testing requirements for the cotton dust standard to align them with current practices and technology. Three commenters supported OSHA's proposed updates to requirements for pulmonary function testing in the cotton dust standard (NIOSH, OSHA–2012–007–0726; NABTU, OSHA–2012–0007–0742; and Change to Win, OSHA–2012–0007–0759). No comments opposed to these proposed changes were submitted to the rulemaking record. After considering these comments, OSHA has decided to issue this final rule codifying these updates.

Proposed and Final Revisions

OSHA based the proposed revisions to the cotton dust standard pulmonary

function testing requirements on current recommendations from the American Thoracic Society/European Respiratory Society (ATS/ERS), NIOSH, and the American College of Occupational and Environmental Medicine (ACOEM). Each of these organizations is a recognized authority on generally accepted practices in pulmonary function testing. As in the proposal, references to generally accepted practices in this final rule refer to only those practices recommended by ATS/ERS, NIOSH, or ACOEM.

Like other respiratory diseases, byssinosis can slow the speed of expired air and/or reduce the volume of air that can be inspired and then exhaled. To detect and monitor these impairments, spirometry measures the maximal volume and speed of air that is forcibly exhaled after taking a maximal inspiration. Forced Vital Capacity (FVC) is defined as total exhaled volume after full inspiration. Speed of expired air is determined by dividing the volume of air exhaled in the first second, *i.e.,* the Forced Expiratory Volume in One Second (FEV_1), by the total FVC to give the FEV_1/FVC ratio. Values obtained from accurate and repeatable spirometry testing are then compared to reference predicted values, which are averages expected for a person of the same gender, age, height, and race as the employee being tested. A spirometry result that is 100 percent of the predicted value for a person of the same gender, age, height, and race indicates that the individual being tested has average lung function (OSHA, 2013). Depending upon the race of the individual and the reference value group being used, an adjustment may need to be made on the basis of race. This issue is discussed at greater length later in this section. Values are also compared to the employee's previous measurements.

Currently, § 1910.1043(h)(2)(iii) requires that health care providers conducting medical surveillance compare the employee's actual values to the predicted values in appendix C of the standard. Appendix C (29 CFR 1910.1043) contains predicted values derived from equations published by Knudson et al. (1976). Currently, NIOSH (CDC/NIOSH, 2003), ATS/ERS (Pellegrino et al., 2005), and ACOEM (Townsend, 2011) all recommend the Third National Health and Nutrition Examination Survey (NHANES III) as the most appropriate reference data set for assessing spirometry results for individuals in the U.S. population. Therefore, OSHA proposed (81 FR 68581) and in this final rule is now revising this provision to specify use of the NHANES III reference data set and to replace the values currently in appendix C with the NHANES III values, derived from Spirometric Reference Values from a Sample of the General U.S. Population (Hankinson et al., 1999), which are incorporated by reference.

The NHANES III data set is the most recent and most representative of the U.S. population (Hankinson et al., 1999). It lists reference values for non-smoking, asymptomatic male and female Caucasians, African Americans, and Mexican Americans aged 8- to 80-years old. Strict adherence to ATS quality control standards ensured optimal accuracy in developing this data set of spirometry values (Hankinson et al., 1999).

Section 1910.1043(h)(2)(iii) currently specifies that the ''predicted FEV_1 and FVC for blacks shall be multiplied by 0.85 to adjust for ethnic differences'' because the Knudson data set contains reference values only for Caucasians. However, such an adjustment for that race/ethnic group is no longer necessary because the NHANES III data set contains reference values for African Americans. However, the NHANES III data set does not contain reference values for Asian Americans, who typically have smaller lung volumes compared to Caucasians of the same age, height, and gender (Pellegrino et al., 2005). To obtain Asian American reference values, ATS/ERS (Redlich et al., 2014) and ACOEM (Townsend, 2011) recommend that Caucasian reference values for FVC and FEV_1 be multiplied by a factor of 0.88. Therefore, OSHA proposed and this final rule requires use of a 0.88 correction factor to obtain Asian American reference values for the FVC and FEV_1. Because race does not appear to affect FEV_1/FVC (ratio), OSHA did not propose and is not requiring to apply a correction factor to Caucasian values to derive a ratio for Asian Americans. If the NHANES data set is updated to include Asian American values in the future, and generally accepted practices endorse that data set for use in the U.S., OSHA will consider revising § 1910.1043(h)(2)(iii) to include that update.

In comments to the record, NIOSH supported use of the NHANES III spirometric reference values instead of the older Knudson 1976 spirometric reference values and the use of a correction factor of 0.88 to reference values for FEV_1 and FVC in Caucasians to determine reference values for Asian Americans (OSHA–2012–0007–0726).

While use of the NHANES III data set will simplify interpretation of spirometry results by providing reference values for more race/ethnic groups, neither the NHANES III nor the correction factor addresses every race/ethnic group. Therefore, OSHA is finalizing the proposed text indicating that FVC, FEV_1, and FEV_1/FVC values be compared to ''appropriate'' race ethnicity specific values. The term ''appropriate'' includes groups that are not represented in the NHANES III dataset. For example, using Mexican American values for non-Mexican American Hispanic workers may be appropriate. Designations of race/ethnicity are self-reported by workers, and bi-racial or multi-racial workers should select the race/ethnicity category that best describes them. OSHA's guidance document on spirometry testing provides some additional guidance on this topic, including a recommendation to use Caucasian reference values for Native American Indians (OSHA, 2013).

The software for most spirometers includes the NHANES III data set, which is identified as the Hankinson 1999 data set on some spirometers. If software for older spirometers does not include the NHANES III data set, users of those spirometers would be able to access the NHANES III values online through the NIOSH calculator (CDC/NIOSH, 2010). Tables of the NHANES III values are also available in an appendix to OSHA's spirometry guidance for healthcare professionals that is available online (OSHA, 2013). Therefore, NHANES III values are widely available to spirometry providers, including those providers using older spirometers.

Currently, paragraph (h)(2)(iii) requires an evaluation of pulmonary function testing values using predicted values of FVC and FEV_1, which are the only reference values listed in the tables in current appendix C. The NHANES III reference data set includes the lower limit of normal (LLN) as well as predicted values for FEV_1, FVC, and the FEV_1/FVC ratio. The LLN for these spirometry measurements represents the lower fifth percentile of a healthy (normal) population. That is, 95 percent of a healthy (normal) population should have spirometry values above the LLN, and spirometry values below the LLN could be abnormal (OSHA, 2013). Generally accepted practices by ATS/ERS, NIOSH, and ACOEM currently compare spirometry values to the LLN values to identify impaired pulmonary function.

In particular, ATS/ERS (Pellegrino et al., 2005) defines airways obstruction as an FEV_1/vital capacity (VC) below the LLN. ACOEM (Townsend, 2011) and

NIOSH (CDC/NIOSH, 2003) define borderline airway obstruction as an FEV_1/FVC below the LLN, with an FEV_1 between the LLN and the predicted value; they define airways obstruction as both FEV_1/FVC and an FEV_1 below the LLN. ATS/ERS, NIOSH, and ACOEM indicate that an FVC or VC less than the LLN could indicate possible restrictive impairment (Pellegrino *et al.,* 2005; Townsend, 2011; CDC/NIOSH, 2003).

Therefore, OSHA proposed and is finalizing (h)(2)(iii) to require an evaluation of FEV_1, FVC, and FEV_1/FVC against the LLN and percent predicted values to fully characterize possible pulmonary impairment in exposed workers, which is consistent with generally accepted current practices and supported by NIOSH (OSHA–2012–0007–0726). OSHA's requirement to evaluate the FEV_1/FVC ratio in addition to FEV_1 and FVC will not affect triggers for changes in medical surveillance frequency or referral for a detailed pulmonary examination, because the standard bases those triggers solely on FEV_1 values.

OSHA also proposed and is finalizing a change in the triggers for the frequency of medical surveillance. Currently, paragraphs (h)(3)(ii)(A) and (B) of the standard require frequency of medical surveillance based in part on whether the FEV_1 is above or below 80 percent of the predicted value. OSHA proposed that the basis for frequency of medical surveillance be changed to whether the FEV_1 is above or below the LLN. As noted above, generally accepted practices currently use the LLN as the basis for classifying possibly abnormal lung function. Pulmonary function normally declines with age, and the LLN better accounts for age-related declines than the current standard (Townsend et al., 2011). There is evidence that the cut-off point used by the standard, 80 percent of the predicted value, can result in erroneous lung function interpretation in adults (Pellegrino et al., 2005). Therefore, OSHA proposed and is now making final the use of the LLN to determine the frequency of lung-function testing.

OSHA also proposed and is now making a correction to § 1910.1043(n)(1). Currently, paragraph (n)(1) specifies that appendices B, C, and D of the cotton dust standard are mandatory. Since OSHA in this rulemaking is removing the old Knudson values from appendix C and reserving the appendix for future use, OSHA is modifying § 1910.1043(n)(1) to now specify that only appendices B and D are mandatory.

OSHA also makes corrections to § 1910.1043, appendix B–II, B, ''Occupational History Table.'' The table's column titled ''Tenure of Employment'' contains boxes in which dates of employment are entered. To allow the entry of dates that occurred later than 1999, OSHA proposed to change the dates to ''From 19____ or 20____'' and ''To 19____ or 20____.'' After further consideration, OSHA is finalizing this change, but with an alternation that will make the date entry even more open-ended. The agency is changing the column's two sub-headers to read as follows: ''FROM (year)'' and ''TO (year.)''

In reviewing this appendix, OSHA also noticed additional, minor technical variations from current practice and other similar forms in other health standards. In appendix B–II, A, ''Identification,'' OSHA is removing the ''age last birthday'' question because the form already asks for the employee's birthday. Additionally, OSHA is changing the measurement for height to inches (in) from centimeters (cm) and adding that the weight should be listed in pounds (lbs).

Section 1910.1043, appendix D, sets standards for spirometric measurements of pulmonary function. OSHA based the proposed changes to appendix D, which are now finalized, on the most recent spirometry recommendations from ATS/ERS (Miller et al., 2005). Many of these changes reflect advances in spirometry procedures or methods of interpretation.[5] Other changes reflect technological changes associated with the current widespread use of flow-type spirometers, in addition to volume-type spirometers, which were in widespread use in 1978 when OSHA published the current standard, and remain in use today. The changes would apply only to equipment purchased one year or more after OSHA publishes the final standard in the **Federal Register**. This would give time for distributors to exhaust existing stocks and allow medical providers to continue using the older spirometers until they buy new ones in the normal course of business. For equipment purchased on or before the one year anniversary of the **Federal Register** publication date, the original specifications in appendix D continue to apply.

Current appendix D(I)(b) specifies volume capacity for spirometers, and this final rule is changing it from seven to eight liters in appendix (D)(I)(b)(2). Current appendix D(I)(e) specifies flow rates for flow-type spirometers, and the final rule is changing it from 12 to 14 liters per second in D(I)(e)(2). These revisions to appendix D(I)(b) and (e) reflect current recommendations by ATS/ERS (Miller et al., 2005).

Current appendix D(I)(g) requires either a tracing or display, and OSHA is revising this language in appendix D(I)(g)(2) to ''paper tracing or real-time display.'' When OSHA published the current standard in 1978, a pen linked to a physical strip chart generated tracings of expiration curves on graph paper during pulmonary testing. In contrast, most current flow-type and volume-type spirometers use computer-generated displays of expiration curves projected on the spirometer or on an attached computer screen.

In appendix D(I)(g)(2), OSHA proposed and is adding size specifications for computer-generated displays, the technology most often used today (Miller et al., 2005). An issue that was critical for tracings in 1978, and remains critical for both tracings and displays today, is that they be large enough to allow a technician to easily evaluate the technical acceptability of the expiration during testing. A large real-time display allows the technician to easily view a technically unacceptable expiration and coach the worker to achieve optimal expirations in subsequent attempts. Current appendix D(I)(g) also specifies requirements for paper tracings of the expiration curve, and requires that the tracings be of sufficient size for hand measurements to conform to appendix D(I)(a). OSHA is revising paragraph D(I)(g)(2) to indicate ''If hand measurements will be made.'' OSHA is making this change because hand measurements are rarely used, and the values currently shown in the expiration curve are usually computer generated today.

Original appendix D(I)(g) also requires the spirometer to display flow versus volume or volume versus time tracings. The revision in appendix D(I)(g)(2) requires the spirometer to display both flow-volume and volume-time curves or tracings during testing. The flow-volume curve emphasizes early expiration and allows the technician to detect problems early in the maneuver (OSHA, 2013). The volume-time curve emphasizes the end of the expiration and allows the technician to coach the patient to achieve a complete expiration

[5] Appendix D provides minimal standards that must be employed when making spirometry measurements. Users of appendix D should also consult generally accepted practices from ATS/ERS (Pellegrino et al., 2005; Miller et al., 2005), NIOSH (CDC/NIOSH, 2003), and ACOEM (Townsend, 2011) for a complete list of current spirometry standards. OSHA's spirometry guidance also outlines those practices (OSHA, 2013).

(OSHA, 2013). OSHA is also updating the paragraph to indicate that both types of curves or tracings must be stored and available for recall. This requirement to store curves will allow the assessment of results for acceptability and repeatability, once testing is concluded, and it will also make it possible to include the curves in reports to health care providers who interpret the results (OSHA, 2013).

Current appendix D(I)(h) requires that instruments be capable of accumulating volume for a minimum of 10 seconds and not stop accumulating volume before (1) the volume change for a 0.5-second interval is less than 25 millimeters, or (2) the flow is less than 50 milliliters per second for a 0.5-second interval. As noted by ATS in 1987, these end-of-test criteria, which were first included in the 1979 ATS statement, caused premature termination of exhalation and FVCs that were falsely reduced by as much as 9 percent (ATS, 1987). To avoid such falsely reduced FVCs, ATS defined end-of-test criteria only according to volume change from 1987 onward (ATS 1987, 1994, 2005). Therefore, OSHA is updating the first clause in appendix D(I)(h)(2) by specifying the currently recommended volume change of less than 25 milliliters for a 1-second interval (Miller et al., 2005) and is also removing the latter clause, *i.e.,* that the instrument shall not stop accumulating volume before the flow is less than 50 milliliters per second for a 0.5-second interval. These changes that were proposed and are now final make appendix D consistent with current ATS/ERS recommendations for expiratory end-of-test criteria using volume increment only, since flow rate criteria were abandoned in 1987 (ATS, 1987; Miller et al., 2005). OSHA is also updating this provision by revising the time for which the instrument must be capable of accumulating volume to 15 seconds, the maximum time for which an exhalation should be done according to ATS/ERS (Miller et al., 2005). In 1987, ATS stated that they encourage spirometer designs that allowed patients to continue exhaling for as long as possible (ATS, 1987).

Current appendix D(I)(j), (II)(b), and (IV)(b) provide requirements for the calibration of spirometers, and the final rule updates several of these requirements. Revisions to appendix D(I)(j)(2), (II)(b), and (IV)(b) clarify that the technician must always check the calibration of spirometers, and recalibrate them only if the spirometer requires the technician to do so. That change is consistent with recommendations by ATS/ERS (Miller et al., 2005). The reason for the change is that while technicians cannot recalibrate many spirometer models in current use, they nevertheless must check the volume accuracy of all spirometers; this ensures that the spirometers are operating within calibration limits, *i.e.,* that the spirometers are accurate (OSHA, 2013). In addition, appendix D(II)(b) was revised to indicate that the calibration check is to assess the volume accuracy of the spirometer and that calibration checks be done daily, or more frequently if specified by the spirometer manufacturer when the spirometer is in use. This language, which is more specific than the proposed ''check all spirometers regularly,'' was suggested by NIOSH, based on ATS/ERS (Miller et al., 2005) recommendations (OSHA 2012–0007–0726). NIOSH also commented that OSHA may want to note that when performing calibration checks, it is the volume accuracy of the spirometer that is being validated (OSHA–2012–0007–0726).

OSHA proposed and is making in the final rule a number of changes to appendix D(I)(j): First, it is not including the following text in appendix D(I)(j)(2) because it is ambiguous and provides no useful information: ''. . . with respect to the FEV_1 and FVC. This calibration of the FEV_1 and FVC may be either directly or indirectly through volume and time base measurements.'' The second update to appendix D(I)(j)(2) includes the current ATS/ERS requirements for calibration-syringe accuracy and volume displacement (Miller et al., 2005). As noted above, OSHA is revising the term ''calibration'' to ''calibration check.'' Another change to paragraph D(I)(j)(2) is to revise the term ''calibration source'' to ''calibration syringe'' because a syringe is the only type of calibration source currently used, so specifying a syringe instead of a source would clarify the requirement.

In addition, OSHA changed the word ''should'' in D(I)(j)(2) to ''shall,'' so the new D(I)(j)(2) would read, ''the volume-calibration syringe shall provide a volume displacement of at least 3 liters and shall be accurate to within ±0.5 percent of 3 liters (15 milliliters).'' The phrase ''should'' sounds advisory, and the current practices OSHA is updating are based on the 3 liter size of the syringe. There were no comments addressing this point.

Current appendix D(II)(b) provides that technicians should perform calibrations using a syringe or other source of at least two liters. The change in the syringe volume to three liters is consistent with current practices. OSHA also is changing the term ''syringe or other volume source'' to ''syringe'' for the reasons described above in the discussion of paragraph D(I)(j). Another change to appendix D(II)(b) is to delete the phrase ''or method.'' The meaning of that phrase is unclear; the sentence is addressing calibration checks of an instrument (*i.e.,* spirometer), not a method. OSHA also is updating calibration check procedures for flow-type and volume-type spirometers to determine whether a spirometer is recording 3 liters (L) of air ±3.5 percent (Miller et al., 2005; OSHA, 2013). The check of flow-type spirometers would involve the injection of air at three different speeds, and the check of volume-type spirometers would involve a single injection of air and a check for spirometer leakage. Users should refer to generally accepted practices and other guidance for complete details about calibration checks (see, *e.g.,* Miller et al., 2005; Townsend, 2011; OSHA, 2013). OSHA is also changing the term ''recalibration'' in this provision to ''calibration checks'' for the reasons stated above in the discussion of paragraph D(I)(j). Finally, OSHA is changing ''should'' to ''shall'' in the first sentence of D(II)(b) for the same reasons as discussed above regarding paragraph D(I)(j).

Appendix D(II)(a) currently contains requirements for measuring forced expirations, including having the patient make at least three forced expirations. OSHA is updating this paragraph to have the worker perform at least three, but no more than eight, forced expirations during testing. This change would clarify that up to eight forced expirations can be attempted to obtain three acceptable forced expirations (Miller et al., 2005). The same paragraph currently states that ''The subject may sit, . . .'' OSHA proposed that ''subject'' be changed to ''patient'' primarily because ''subject'' implies someone in an experimental trial. OSHA further considered this proposed change after NIOSH commented that the term ''patient'' can potentially imply a person with an illness and that a term such as ''worker'' or ''testing participant'' may be a better term (OSHA–2012–0007–0726). OSHA has decided that worker is the appropriate term to use since it refers to the individual being tested and has updated appendix D(II)(a) to indicate ''worker'' instead of ''subject.'' The terms ''patient'' or ''subject'' were also revised to ''worker'' in appendix D(I)(g)(2), D(III)(a) and D(IV)(c). OSHA also is clarifying the text in paragraph D(II)(a) to indicate that the expiration must be repeatable. The term

''repeatability,'' now used by ATS/ERS, would be an update to the existing term ''reproducibility''; paragraph D(II)(a)(7) lists the criteria for repeatable (formerly, reproducible) results. In addition, appendix D(II)(a) lists elements of ''unacceptable'' efforts in paragraphs (a)(1)–(a)(7); OSHA revises this language to ''technically unacceptable'' to make clear that the problem is not with the worker's lungs but with the flaws in how the test is conducted.

Appendix D(II)(a)(3) currently specifies that a worker's efforts during testing are unacceptable when the expiration does not continue for at least five seconds or until an obvious plateau in the volume-time curve occurs. The revision to this paragraph clarifies that results may be acceptable if the worker *attempted to exhale* (versus actually exhaled) for at least six seconds *and* the volume-time curve shows no change in volume (<0.025 L) for at least one second (Miller et al., 2005). The change was made because OSHA agrees with a NIOSH comment that OSHA should specify the ATS/ERS (Miller et al. 2005) criteria of <0.025 L for at least one second rather than ''an obvious plateau'' (OSHA–2012–00070–0726). Therefore, the expiration must meet both of these criteria for a spirometry result to be technically acceptable. Many workers who are young or have small lung volumes can complete an expiration in less than six seconds, and their results may be acceptable if the technician observes no change in volume in the volume-time curve (OSHA, 2013).

Current appendix D(II)(a)(4) provides that the results are unacceptable when the worker coughs or closes the glottis during forced expiration. OSHA is revising the paragraph to clarify that the results are unacceptable if coughing occurs in the first second of expiration, a condition that is consistent with current ATS/ERS recommendations (Miller et al., 2005). Coughing in the first second interferes with measurement of the FEV_1 (Miller et al., 2005), but coughing toward the end of the expiration does not affect test results (OSHA, 2013). Glottis closure at any time may result in premature termination of the expiration (Miller et al., 2005).

Current appendix D(II)(a)(6) provides that the results are unacceptable when there is an unsatisfactory start to expiration characterized by excessive hesitation, *i.e.,* one with an extrapolated volume greater than 10 percent of the FVC on the volume-time curve. As noted in the 1987 ATS statement, a criterion of 10 percent could result in a falsely elevated FEV_1 from a suboptimal effort (ATS, 1987). The change to appendix D(II)(a)(6) indicates that extrapolated volume must be less than 150 milliliters or 5 percent of the FVC, whichever is greater, to be unacceptable. This change updates the provision to be consistent with the most recent ATS/ERS recommendation on criteria for start-of-test so that an accurate time zero is set (Miller et al., 2005). All ATS or ATS/ERS statements define acceptable start-of-test criteria according to volume, as well as percent FVC, using whichever criterion is larger for a given patient (ATS, 1979, 1987, 1994; Miller et al., 2005), and it is not clear why the volume value was excluded from the current cotton dust standard. OSHA is also including the 2005 ATS/ERS recommendations for volume, in addition to percentage of FVC, for consistency with ATS/ERS. Expressing the values as both percentage of FVC and as a volume, and using whichever approach gives the larger allowed extrapolated volume, aids in the interpretation of results for individuals with very small or very large lung volumes. For example, since 5 percent of FVC will be less than 150 milliliters in individuals with FVC <3.00 L, the 150 milliliter criterion would be used for those patients. But 5 percent of FVC would exceed 150 milliliters in individuals with FVC >3.00 L, so in that case the 5 percent of FVC criterion would be used to evaluate the start-of-test for these patients.

As stated above, appendix D(II)(a)(7) contains criteria for acceptable repeatability. Editorial changes proposed in appendix D(II)(a)(7) are for clarification. Notably, OSHA removed the word ''three'' because technicians can examine up to eight acceptable curves to select the two highest FEV_1 and FVC values (Miller et al., 2005). OSHA also changed ''variation'' to ''difference'' because ''difference'' is the more appropriate mathematical term to use when comparing only two numbers.

In appendix D(II)(a)(7), OSHA also revised the maximum difference between the two largest FVC values and the two largest FEV_1 values of a satisfactory test to 150 milliliters, a change from the current maximum difference of 10 percent or ±100 milliliters, whichever is greater. This revision to the criteria for acceptable repeatability reflects current ATS/ERS recommendations (Miller et al., 2005). In 2005, ATS/ERS stated that many patients are able to achieve repeatability of FEV_1 and FVC to within 150 milliliters (Miller et al., 2005). In 1994, the ATS changed its repeatability criterion from a volume and a percentage difference between values to a volume difference only, so that the criterion was equally stringent for all lung sizes, and also so that it was easy to compute during the test if hand-measurements were made (ATS, 1994). OSHA is also making editorial changes to make it clear that the difference between the two largest acceptable FVC values ''shall'' not exceed 150 milliliters and the two largest acceptable FEV_1 values ''shall'' not exceed 150 milliliters. OSHA inadvertently proposed that the term ''should not exceed'' be used, and the agency is revising the term to indicate ''shall not exceed.'' The change is consistent with other changes being made to this regulation because the word ''should'' sounds advisory (see, *e.g.,* changes to D(I)(j)(2)).

The agency discussed final changes to appendix D(II)(b) above.

OSHA is removing appendix D(III)(b). The paragraph refers to a NIOSH guideline that specifies an outdated evaluation criterion of FEV_1/FVC ratio of 0.75 percent, and OSHA is unaware of an updated NIOSH cotton dust guideline that more appropriately compares the FEV_1/FVC ratio to LLN. As noted above, generally accepted practices use the LLN as the basis for classifying possibly abnormal lung function because it accounts for age-related declines in lung function (Townsend, 2011). Appendix D(III)(b) also refers to a table that OSHA never included in the final cotton dust standard. That table was most likely Table XII–12 in the NIOSH criteria document for cotton dust (CDC/NIOSH, 1974). The lack of the table does not appear to be a pressing issue since no user complained about the missing table after OSHA promulgated the standard. In addition, the information is available to users in the NIOSH criteria document.

The updates to current paragraphs D(IV)(a) and (d) change ''reproducibility'' to ''repeatability'' to conform to the terminology now used by ATS/ERS (Miller et al., 2005). ''Repeatability'' would have the same meaning as ''reproducibility.'' OSHA also is changing the term ''calibration'' in paragraph D(IV)(b) to ''calibration checks'' for the reasons stated above in the discussion of paragraph D(I)(j).

A commenting organization, Change to Win, generally supports OSHA's revisions of the cotton dust standard; however, it articulates the following reservations: (1) The lack of accounting for the ''healthy worker effect'' seen in epidemiological studies that results from the use of the NHANES population-based data, which may result in ''false positives'' (*i.e.,* the worker appears to be normal when in

fact they only look normal compared to a ''sicker'' general population); and (2) the lack of a requirement for the employer to look at results of all the exposed workers to see if trends may indicate an inadequacy of exposure control (OSHA–2012–0007–0759). OSHA appreciates these concerns and acknowledges that some workers may have above average lung function. However, paragraph (h)(3)(iv) requires periodic medical examinations for some workers, including comparisons of current examinations to previous examinations to determine whether significant changes have occurred. This might allow a physician to detect a significant change from baseline lung function in a worker who otherwise has above average lung function compared to a reference population. OSHA agrees that evaluating pulmonary function testing results of all exposed workers may provide useful information for employers and employees; this action is not required by the agency because it goes beyond the scope of this effort, which is to simply update the standard to make it consistent with current practices and technologies.

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3. Subpart F of Part 1915—General Working Conditions, Definitions in 29 CFR 1915.80

Existing requirements in the sanitation standard for Shipyard Employment, § 1915.88(j)(1) and (2), specify that employers must, to the extent reasonably practicable, clean and maintain workplaces in a manner that prevents vermin infestation. When employers detect vermin, they must implement and maintain an effective vermin-control program.

Paragraph (b)(33) of § 1915.80 defines the term ''vermin'' as ''insects, birds, and other animals, such as rodents and feral cats, that may create safety and health hazards for employees.'' After stakeholders raised concerns about the inclusion of ''feral cats'' in the definition of vermin, OSHA proposed to remove the term ''feral cats'' from the definition in § 1915.80(b)(33). This final rule enacts the proposed removal without change.

OSHA received over 700 comments in response to the NPRM, over 500 of which addressed the removal of the term ''feral cats'' from the definition of vermin. Each of the comments favored the proposed change. Many of these comments (250) were from a mass mail campaign with the following comment:

> Just because these cats aren't pets doesn't mean they're not cared for. Indeed, many shipyard employers and their employees value the cats both for companionship and as a means of controlling rodent populations. Classifying shipyard cats as ''vermin'' will likely lead to their mistreatment and interfere with the trap-neuter-return (TNR) programs used to manage their numbers and keep the cats healthy. OSHA is a very influential agency. By removing cats from the definition of ''vermin,'' OSHA is setting an important example for other government agencies to establish policies that more effectively protect cats and promote public health and safety.

Most of the remaining comments contained similar points, such as, OSHA should not classify cats as vermin; cats should be treated humanely; and some cats may be mistreated if OSHA left the definition as is. In addition, commenters stated that cats in fact assist at shipyards in controlling vermin, such as rodents and mice, without the hazards associated with the use of pesticides or chemicals.

After considering these comments, OSHA has decided to remove the term ''feral cats'' from the definition of vermin in § 1915.80(b)(33). Removing the term ''feral cats'' is consistent with the general industry sanitation standard provision on vermin, which describes vermin as ''rodents, insects, and other vermin'' (§ 1910.141(a)(5)). OSHA does not believe that removing the term ''feral cats'' from the definition will reduce worker health and safety, and notes that feral cats may help reduce the presence of vermin. To the extent feral cats pose a safety or health hazard at any particular shipyard, OSHA will consider the cats to be ''other animals'' under the standard. The final rule is identical to the proposed rule.

4. Subpart D of Part 1926—Occupational Health and Environmental Controls, Medical Services and First Aid in 29 CFR 1926.50

Under 29 CFR 1926.50, employers must provide specified medical services and first aid to employees to address serious injuries that may occur on the job. Since 1979, OSHA has required the posting of telephone numbers of

physicians, hospitals, or ambulances for worksites located in areas where 911 emergency service is not available. OSHA adopted this requirement when 911 emergency service was still a relatively new concept, and was available only in certain parts of the country. The final rule is identical to the proposed rule.

Today, 911 emergency service is available almost everywhere in North America. In nearly all locations in the United States and Canada, a 911 call over a land-line telephone will link the caller to an emergency-dispatch center. In the United States, most localities with 911 service also have so-called ''Enhanced 911,'' which will not only connect the land-line caller to a dispatcher, but also will automatically provide the caller's location to the emergency dispatcher. This automatic-location information is critical for emergency responders in cases when the 911 caller does not know his/her exact location, or does not have sufficient time to provide such information.

Although the automatic transmission of location information to emergency dispatchers is customary for land-line telephones, the task of automatically transmitting location information is more complex when the emergency call originates from a wireless telephone. Since 1996, the Federal Communications Commission (FCC) has been phasing in the requirement that wireless carriers adopt technologies that provide 911 caller-location information. The last phase-in benchmark for wireless handsets occurs in January of 2019.[6] As a result, in some remote areas of the country, wireless-telephone carriers still are unable to provide accurate information about the location of the 911 caller to 911 answering centers. OSHA proposed revisions to § 1926.50(f) to update the 911 service-posting requirements consistent with the current status of land-line and wireless-telephone technologies.

The proposed revisions addressed the problem of locating callers, usually cell-phone callers, in remote areas that do not have automatic-location capability. In such areas, the proposed revisions required employers to post in a conspicuous location either the latitude and longitude of the worksite or other location-identification information that effectively communicates the location of the worksite. Employers can obtain information about which counties, or portions of counties, are exempted from the 911 location accuracy requirements from FCC PS Docket No. 07–114, which is publicly available on the FCC's Electronic Comment Filing System (ECFS) web page: *apps.fcc.gov/ecfs/proceeding/view?name=07-114.*

The proposed revisions also required employers to ensure that the communication system they use to contact ambulance service is effective. Under § 1926.50(e), employers are required to provide a communication system for contacting ambulance service, or proper equipment for transportation of an injured person. When using wireless telephones as a communication system, however, that system's availability varies based on the location of the caller. If an employer is relying upon a communication system at a worksite, it must be effective at the worksite. OSHA did not propose any changes to the requirement to post telephone numbers of physicians, hospitals, or ambulances for worksites located in areas where 911 emergency service is not available.

OSHA received two comments on the revision of § 1926.50, from North America's Building Trades Unions (NABTU) (OSHA–2012–0007–0742) and the Laborers' Health & Safety Fund of North America (LHSFNA) (OSHA–2012–0007–0757). Both comments supported the revision. The comment from LHSFNA noted that ''[m]any construction sites are in remote locations (*e.g.,* pipeline work, highway construction and windmill sites) where cell phone coverage is inconsistent. . . .This proposed revision could save many lives on remote construction sites.'' After considering these comments, OSHA is revising the standard as proposed in the NPRM. The final rule is identical to the proposed rule.

5. Subpart D of Part 1926—Occupational Health and Environmental Controls, Gases, Vapors, Fumes, Dusts, and Mists in 29 CFR 1926.55

The provisions of § 1926.55 establish permissible exposure limits for numerous toxic chemicals used during construction activities. These provisions are the construction counterpart to the general industry standard at § 1910.1000. OSHA proposed clarifications for several of these provisions, notably paragraphs (a) and (c) and appendix A to § 1926.55. The final rule is identical to the proposed rule, with the addition of an asterisk and a non-substantive, formatting change to appendix A to § 1926.55. OSHA proposed that the phrase ''threshold limit values'' (TLV) be revised to ''permissible exposure limits'' (PELs) and that the references to the American Conference of Governmental Industrial Hygienists (ACGIH), in both paragraph (a) and appendix A, be eliminated, as the original language was confusing. While OSHA originally adopted these limits from ACGIH recommendations, the limits are OSHA, not ACGIH, requirements. OSHA received two comments in response to this first proposed revision of § 1926.55. The North American Insulation Manufacturers Association (NAIMA) (OSHA–2012–0007–0701) agreed the current language in the standard is confusing and the proposed revisions were preferable. The American Industrial Hygiene Association (AIHA) supported the change to refer to the limits as PELs but requested that OSHA include a reference to the ACGIH Threshold Limit Values of Airborne Contaminants for 1970 in the standard (OSHA–2012–0007–0734). The comment did not state a reason to maintain the reference to ACGIH. OSHA acknowledges that these PELs are based on the ACGIH values, but these PELs are enforceable OSHA requirements. After considering these comments and to avoid possible confusion, OSHA has decided to revise the standard as proposed to use the phrase ''permissible exposure limits'' and to not include the references to ACGIH in the regulatory text and appendix A.

Second, the phrase ''shall be avoided'' in paragraph (a) is confusing as to whether it indicates the provision is mandatory, as intended, or advisory and is not appropriate in regulatory text. OSHA proposed revising this language to read, ''An employee's exposure . . . must at no time exceed the exposure limit given for that substance.''

Third, the words ''inhalation, ingestion, skin absorption, or contact'' in paragraph (a) are redundant and confusing. In addition, the concentrations listed are airborne values, and the standard addresses exposure through any route. OSHA proposed to delete these words.

Fourth, appendix A is not an appendix but an integral part of the standard. To acknowledge this relationship, OSHA proposed to revise the heading to read, ''Table A.''

Fifth, appendix A has a column labelled ''Skin Designation'' under which an ''X'' demarcates certain substances, although the appendix provides no definition of ''X.'' The 1970 ACGIH publication, however, notes that the ''X'' identifies substances that present a dermal hazard. OSHA proposed adding a footnote to appendix A that clarifies the meaning of this designation.

Sixth, appendix A has two footnotes designated by asterisks. However, there

[6] *See* 47 CFR 20.18—911 Service.

are no asterisks in the body of the table referencing these footnotes. The first footnote, designated by a single asterisk, says, ''The PELs are 8-hour TWAs unless otherwise noted; a (C) designation denotes a ceiling limit.'' The second footnote, designated by two asterisks, states, ''As determined from breathing-zone air samples.'' OSHA proposed deleting these two footnotes, and moving the content of the footnotes to paragraphs (a)(1) and (2) of § 1926.55.

Finally, OSHA proposed correcting the cross-references to OSHA's construction asbestos standard in paragraph (c) and in appendix A. The correct cross reference is: § 1926.1101. OSHA also proposed deleting footnote 4, which was also a reference to the asbestos standard, as footnote 4 does not appear in the body of the table.

OSHA received two other comments in response to the proposed revisions of § 1926.55. North America's Building Trades Unions (NABTU) (OSHA–2012–0007–0742) submitted comments generally supporting the revisions. Laborers' Health & Safety Fund of North America (LHSFNA) (OSHA–2012–0007–0757) supported the revisions but requested that OSHA revise appendix A to align them with 2009 NIOSH skin classifications and to add a footnote to appendix A stating that these PELs are from the 1969 threshold limit values and may not be protective. OSHA recognizes that most of its PELs were issued shortly after adoption of the Occupational Safety and Health (OSH) Act in 1970, and have not been updated since that time. However, a standards improvement project is not the appropriate vehicle to change appendix A.

After considering these comments, OSHA is revising the standard as proposed with two additions. First, rather than redesignating appendix A to § 1926.55 as Table A, OSHA is dividing appendix A into two tables and designating them as Tables 1 and 2 of § 1926.55. OSHA is also revising the heading for the footnotes to these tables to correspond with this change. Appendix A did not conform with criteria for presenting tables and footnotes in the Code of Federal Regulations. When appendix A was added to the Code of Federal Regulations in 1993, OSHA adopted the format used in ACGIH's 1970 TLVs (58 FR 35076; 35089–35099). This format presented TLVs for most substances in one table and TLVs for mineral dusts in a separate table, with footnotes following the two tables. Accordingly, OSHA is designating the first table in former appendix A as Table 1, with the title ''Permissible Exposure Limits for Airborne Contaminants'', and the second table as Table 2, with the title ''Mineral Dusts.'' The footnotes are now preceded by the heading ''Footnotes to Tables 1 and 2 of this section'' to make it clear that the footnotes apply to both tables. This is a non-substantive, formatting revision. Second, OSHA is adding an asterisk to ''Skin Designation'' in Table 1 to § 1926.55, linked to the footnote about dermal hazards.

6. Subpart D of Part 1926—Occupational Health and Environmental Controls, Process Safety Management of Highly Hazardous Chemicals in 29 CFR 1926.64

To avoid unnecessary duplication, OSHA proposed replacing the entire 31 pages of regulatory text for the Process Safety Management of Highly Hazardous Chemicals (PSM) Standard for construction at § 1926.64 with a cross reference to the identical general industry standard at § 1910.119. The final rule is identical to the proposed rule. Other construction standards have similar cross references to corresponding general industry standards; for example, the Respiratory Protection Standard for construction at § 1926.103 refers to the general industry Respiratory Protection Standard at § 1910.134. The PSM standard has limited applicability to construction, mainly through paragraph (h), *Contractors.*

OSHA received three comments on the revision of § 1926.64: The North America's Building Trades Unions (NABTU) (OSHA–2012–0007–0742), the Laborers' Health & Safety Fund of North America (LHSFNA) (OSHA–2012–0007–0757), and the North American Insulation Manufacturers Association (NAIMA) (OSHA–2012–0007–0701). All three comments supported the revision. After considering these comments, OSHA has decided to replace the regulatory text of the PSM Standard for construction with a reference to the identical general industry standard, as proposed. The final rule is identical to the proposed rule.

7. Subpart E of Part 1926—Personal Protective and Life Saving Equipment, Safety Belts, Lifelines, and Lanyards in 29 CFR 1926.104

The breaking strength of a lifeline is the maximum load that it can carry without failing or breaking. The minimum breaking-strength requirement for lifelines in the safety belts, lifelines, and lanyards standard, § 1926.104(c), has been 5,400 pounds. OSHA proposed revising the minimum breaking-strength requirement for these lifelines from 5,400 to 5,000 pounds. The final rule is identical to the proposed rule.

As noted by OSHA in the proposed fall protection standard published on November 25, 1986 (51 FR 42718, 42726), the agency based the 5,400-pound requirement on the breaking strength of the then-available ¾-inch diameter manila rope used for body-belt systems and not on the forces generated in a fall. The basis for the requirement of a 5,000 pound minimum breaking-strength for lanyards and vertical lifelines adopted in the final fall protection standard at § 1926.502(d)(9) is the force generated by a 250-pound employee experiencing a force 10 times the force of gravity, plus a two-fold margin of safety. Id. The 5,000 pound requirement is also consistent with the most recent ANSI/ASSE standards Z359.1 2007 and A10.32.

For consistency, OSHA proposed revising the minimum breaking-strength requirement for lifelines in the safety belts, lifelines, and lanyards standard to 5,000 pounds. OSHA received comments on the revision of § 1926.104(c), from the North America's Building Trades Unions (NABTU) (OSHA–2012–0007–0742) and the Laborers' Health & Safety Fund of North America (LHSFNA) (OSHA–2012–0007–0757). Both of these comments supported the revision.

After considering these comments, OSHA is revising the minimum breaking-strength requirement in § 1926.104(c) to 5,000 pounds. This revision conforms § 1926.104(c) with the breaking-strength requirements in the fall protection standard at § 1926.502(d)(9). The agency also concludes that identical specifications for the same equipment eliminate confusion and, thereby, improve compliance. The final rule is identical to the proposed rule.

8. Subpart G of Part 1926—Signs, Signals, and Barricades

Subpart G has required that employers comply with Part 6 of the Manual on Uniform Traffic Control Devices (MUTCD), 1988 Edition, Revision 3, September 3, 1993 (''1988 Edition'') or December 2000 MUTCD (''Millennium Edition''). OSHA proposed to revise subpart G to update the incorporation by reference of Part 6 of the MUTCD to the November 4, 2009 MUTCD (''2009 Edition''), including Revision 1 and Revision 2, both dated May 2012. This version of the MUTCD aims to expedite traffic, promote uniformity, improve safety, and incorporate technology advances in traffic control device application (74 FR 66730, 77 FR 28455, and 77 FR 28460).

The final rule is identical to the proposed rule.

The Department of Transportation (DOT) requires that traffic control signs or devices conform to the 2009 Edition (see 23 CFR 655.601 through 655.603). DOT regulations recognize that the MUTCD is the national standard for all traffic control devices installed on any street, highway, or bicycle trail open to public travel (§ 655.603(a)). DOT requires compliance with the 2009 Edition for all federal-aid construction areas (§ 655.603(d)(3)). In addition, each State must have a highway safety program that complies with DOT's designated national standard, and where State or other federal agency MUTCDs or supplements are required, they shall be in substantial conformance with the 2009 Edition (23 U.S.C. 402(a); 23 CFR 655.603(b)(1)). Substantial conformance means that the State MUTCD or supplement shall conform as a minimum to the standard statements included in the 2009 Edition (§ 655.603(b)).

The differences between OSHA's standards that reference the MUTCD's 1988 Edition and the Millennium Edition and DOT's regulations cause potential industry confusion and inefficiency, without advancing worker safety. Accordingly, in Directive CPL 02–01–054, dated October 16, 2012, OSHA stated that it would accept compliance with the 2009 Edition in lieu of compliance with the 1988 Edition or Millennium Edition referenced in § 1926.200(g) through its *de minimis* policy.

OSHA reviewed the differences between the 1988 Edition, the Millennium Edition, and the 2009 Edition, and has concluded that the 2009 Edition will provide greater employee safety benefits than the older versions. The 2009 revisions to the MUTCD largely make the document more accessible and accounts for advances in technology. A comparison of the 1988 and 2009 Editions shows few new requirements; rather, the document is easier to use, with more guidance and supporting material available. The MUTCD is a complex document comprised of standards, guidance, and supporting material. Under § 1926.6(a), OSHA's subpart G provisions incorporate by reference only the mandatory provisions of the MUTCD, *i.e.,* those provisions containing the word ''shall'' or other mandatory language, and only those provisions that affect worker safety with regard to the use of signs, devices, barricades, flaggers, and points of hazard. Previously, it was difficult to locate these provisions, but the 2009 Edition clearly labels them ''standards.''

The revisions to the 1988 and Millennium Editions that affect worker safety are minimal. DOT identified the following areas as significant revisions that relate to work safety in the final rule (74 FR 66730):

- The needs and control of all road users through a temporary traffic-control (TTC) zone apply to all public facilities and private property open to public travel, in addition to highways.
- Federal Highway Administration (FHWA) allows non-compliant devices on existing highways and bikeways to be brought into compliance with the current edition of the MUTCD as part of the systematic upgrading of substandard traffic control devices (and installation of new required traffic control devices) required pursuant to the Highway Safety Program, 23 U.S.C. 402(a). If the FHWA establishes a target compliance date for upgrading such devices, traffic control devices shall be in compliance by that date. (These target compliance dates established by the FHWA are shown in Table I–2 of the 2009 Edition.)
- Workers within the public right-of-way must use high-visibility safety apparel.
- A new section titled ''Automated Flagger Assistance Devices'' (AFAD). These optional devices enable a flagger to assume a position out of the lane of traffic when controlling road users through TTC zones.
- New requirements that flaggers shall use a ''STOP/SLOW'' paddle, flag, or AFAD to control road users; the 2009 Edition prohibits the use of hand movements alone. In the previous editions, it was not clear that hand signals alone were insufficient.
- All devices used for lane channelization (*i.e.,* directing vehicles in a particular direction) must be crashworthy (a characteristic of a roadside appurtenance that has been successfully crash tested in accordance with a national standard such as the National Cooperative Highway Research Program Report 350, ''Recommended Procedures for the Safety Performance Evaluation of Highway Features.'')
- Temporary traffic barriers, including their end treatments (such as an impact attenuator), must be crashworthy.

There was one major revision to the MUTCD, the 2003 Edition, between the Millennium Edition and the 2009 Edition. OSHA is providing a list of the changes between the 2003 Edition and the 2009 Edition in the record (find 2009 Edition figure changes at *www.regulations.gov* in Docket No. OSHA–2012–0007).

OSHA also proposed to revise §§ 1926.200 through 1926.203 in subpart G to clarify their provisions and eliminate duplication.

Section 1926.200(g)—Traffic signs. Existing paragraph (g)(1) of § 1926.200 states, ''[c]onstruction areas shall be posted with legible traffic control signs at points of hazard.'' Accordingly, paragraph (g)(1) does not explicitly require protection by traffic control devices. However, paragraph (g)(1) requires legible signs at points of hazard, and paragraph (g)(2) prohibits misuse of both signs *and devices,* by requiring their use to conform to the MUTCD. Not requiring employers to use, but prohibiting the *misuse* of, protective devices at points of hazard is an anomaly that causes unnecessary confusion.

OSHA proposed to revise paragraph (g)(1) to explicitly require that employers use traffic control devices at points of hazard. OSHA also proposed to revise paragraph (g)(2) to clarify that it covers the design and use of traffic-control devices, and adds a list of those devices: Signs, signals, markings, barricades, and other devices. Consistent with these revisions, OSHA also proposed to revise the headings of § 1926.200 and paragraph (g) by adding the term ''devices'' to these headings. The agency will retain the requirement that signs be legible.

Section 1926.201—Signaling. The agency proposed limiting revisions to § 1926.201 to the 2009 Edition update discussed above.

Section 1926.202—Barricades. OSHA proposed deleting this section because it duplicates the requirements in the revisions to paragraph (g)(1), which require the use of barricades as traffic control devices at points of hazard, and paragraph (g)(2), which require that the design and use of barricades conform to the updated MUTCD.

Section 1926.203—Definitions applicable to this subpart. OSHA proposed deleting this section because the MUTCD defines or describes most of the words defined in this section (*e.g.,* barricade, signs, and signals). To the extent that other provisions of subpart G use the defined words but do not reference the MUTCD, providing definitions for these words is unnecessary because the meanings of the words are either obvious or defined in applicable consensus standards or in other OSHA standards; for example, an adequate description of a ''tag'' is in § 1926.200(h).

OSHA received three comments on the proposed revisions to subpart G. OSHA received a comment of general support from Laborers' Health & Safety

Fund of North America (LHSFNA) (OSHA–2012–0007–0757). A comment from North America's Building Trades Unions (NABTU) (OSHA–2012–0007–0742) supporting the proposed revisions also and requested that OSHA ''make clear that these requirements apply not only to flaggers on road construction projects, but also pedestrian employees working in the work zone. Pedestrian workers are at risk of being injured and/or killed by vehicles inside the work zone. Both flaggers and pedestrian workers should be protected by the MUTCD provisions.'' The provisions of §§ 1926.200(g) and 1926.201(a) protect all workers in construction areas with exposure to traffic. The signaling provision, § 1926.201(a), instructs flaggers to comply with the MUTCD on signaling and on what garments to wear. Following these provisions protects all workers, not only flaggers. OSHA does not see a need to specifically state in the standard that all workers are protected. OSHA also received a comment from American Road & Transportation Builders Association (ARTBA) (OSHA–2012–0007–0754). This comment supports the revision and states that updating to the newest edition of the MUTCD will alleviate uncertainty and confusion caused by OSHA's reference to multiple versions of the MUTCD in existing standards. The comment also supports OSHA's clarification of the standards related to signage, signaling, and barricades in subpart G.

After considering these comments, OSHA has decided to update the references to the MUTCD in subpart G to the 2009 Edition as well as revise §§ 1926.200 through 1926.203 as proposed. Updating the references to the 2009 Edition MUTCD eliminates confusion as to which edition employers must comply with, and will inform employers that compliance with DOT regulations will not conflict with outdated OSHA regulations. The other revisions clarify subpart G's provisions and eliminate duplication. The final rule is identical to the proposed rule.

In summary, OSHA is revising the safety and health regulations for construction to adopt and incorporate the 2009 Edition of the MUTCD and clarify the regulatory text. The revisions delete the references in §§ 1926.200(g)(2) and 1926.201(a) to the 1988 Edition and Millennium Edition of the MUTCD and insert references to the 2009 Edition. The revisions also revise the regulatory text of paragraphs (g)(1) and (2) of § 1926.200 to eliminate confusion regarding OSHA's interpretation of the existing text. OSHA is deleting § 1926.202 because it duplicates the requirements in the revisions to §§ 1926.200(g) and 1926.203 because the revisions make this section unnecessary.

9. Subpart H of Part 1926—Materials Handling, Storage, Use, and Disposal, General Requirements for Storage in 29 CFR 1926.250

Subpart H of OSHA's construction standards governs the handling, storage, use, and disposal of construction materials on a work site. Section 1926.250 addresses safe storage of building materials inside buildings under construction, and § 1926.250(a)(2) requires employers to post maximum safe load limits of floors in storage areas. This requirement is important during the construction of large buildings because employers often store heavy building materials in these structures on upper floors to accommodate construction staging and schedules. If the weight of stored materials and equipment exceed the maximum safe load limit of the floor, then there is a risk of a localized failure of the floor and structural collapse. However, requiring employers to post safe load limits is unnecessary in residential construction because employers do not place heavy materials in storage areas above floor or slab on grade. Therefore, OSHA proposed revising § 1926.250(a)(2) to exclude residential construction from the posting requirement. The final rule differs from the proposed rule. The final rule uses the term ''all single-family residential structures and wood-framed multi-family residential structures'' instead of ''detached single-family dwellings or townhouses that are under construction.'' The final rule also contains organizational changes to the proposed language.

OSHA received three comments on the revision of § 1926.250(a)(2), from the North American Insulation Manufacturers Association (NAIMA) (OSHA–2012–0007–0701), the National Association of Home Builders (NAHB) (OSHA–2012–0007–0747), and the North America's Building Trades Unions (NABTU) (OSHA–2012–0007–0742).

OSHA addresses the comment from NAHB first. The comment supports the proposal to exclude detached, single family residences and townhouses from the load limit posting requirements in § 1926.250(a)(2). NAHB suggests the load limits for floors in residential construction in the United States are uniform and that the weight of materials stored on upper floors are within the safety factor of the supporting material. The comment notes that the International Residential Code (IRC) ''has been adopted and is generally used as a base building code standard throughout most of the United States.'' The IRC ''is a comprehensive, stand-alone residential building code addressing the design and construction of one- and two-family dwellings and townhouses not more than three stories above grade'' and ''has specific design requirements for live loads (*i.e.,* weight of occupants, furnishings, etc.) placed on floors.'' The comment gives an example of what a larger load imposed on an upper floor of a residential home under construction might be: ''a stack of 25 (gypsum board or drywall) is well within the inherent factors of safety, particularly since it is only imposing a short-term load.''

While this comment supports OSHA's proposed revisions, it requests that OSHA change ''detached single-family dwellings or townhouses that are under construction'' to ''residential home building'' or ''residential home construction'' to be in line with the language used in OSHA's Compliance Guidance for Residential Construction, STD 03–11–002. ''Residential construction'' means that the end-use of the building in question must be as a home or dwelling and must be constructed using traditional wood frame construction materials and methods. A comprehensive explanation of OSHA's definition of ''residential construction'' is in STD 03–11–002, which is located in the docket for this rulemaking.

NAIMA submitted a comment in support of the proposed changes, stating, ''safe load limit requirements are unnecessary for single-family home construction as they do not store heavy materials that could endanger employees working at lower levels.''

The agency received a comment opposed to the proposed revisions from NABTU. Their comment states that it is possible that during the construction of townhouses, ''one unit may be used as a material depot during the procurement and construction phase.'' OSHA understands that it is possible for excessive loads to be stored on any floor during residential construction, but it is not industry practice to store loads for extended periods on the upper floors of the types of residential buildings excepted by this revision. NABTU's comment goes on to say that ''[o]btaining maximum safe loads information is not an extra burden on employers.'' The fact that employers no longer will need to post signs in storage areas in residential construction does not mean they are relieved of their duty to know the safe load limits and ensure the safety of workers. As noted above,

load limit requirements in residential construction are mostly uniform in the United States, and materials that are typically stored are well within the safety factor. OSHA has requirements that require safe load limits not be exceeded without requiring the posting of such limits. For example, § 1910.22(b) requires that a walking-working surface support the maximum intended load for that surface and does not require the posting of the load limit. Finally, this comment correctly notes that employers must ensure the weight of stored materials does not exceed safe load limits. It also argues that the posting of signs in residential construction ''increase awareness'' regarding load limits ''even if the likelihood is low'' for error or incidents. OSHA does not dispute that more information and sign posting in general can increase safety on a job-site, but in this case, the posting of load limits in storage areas of residential construction sites does not increase or decrease the level of safety.

After considering these comments, OSHA is revising § 1926.250(a)(2) to exclude all single-family residential structures and wood-framed multi-family residential structures from the posting requirement. The final revisions to the regulatory text are somewhat different than the revisions in the proposed rule. First, OSHA has named the subsection ''Load Limits'' for identification purposes. Second, the revision moves the requirement that the weight of storage materials not exceed safe load limits from the end of the subsection to the beginning. This change makes clear that the duty to ensure that any loads placed on floors do not exceed the maximum safe loads of the floors exists regardless of whether or not employers are required to post the safe load limits. Third, the revision changes the style of language used to be more in line with the language used throughout subpart H. Finally, OSHA agrees with the first commenter and has determined that the use of the words ''all single-family residential structures and wood-framed multi-family residential structures'' is more appropriate than the proposed ''detached single-family dwellings or townhouses that are under construction.'' OSHA considered using the words ''residential construction'' to be in line with the language used in 29 CFR part 1926, subpart M, and STD 03–11–002, but this would limit the exception to structures constructed using traditional wood frame construction materials and methods. The revision covers all single-family residential structures, regardless of the materials or methods used during construction, and multi-family residential structures constructed using traditional wood frame construction materials and methods.

OSHA finds that the revision will lessen the compliance burden of employers without jeopardizing the safety of employees. While employers involved in residential construction do not place heavy loads on the floors of these structures, the revision does not relieve employers of the duty to ensure that any loads placed on these floors do not exceed the maximum safe loads of the floors.

10. Subpart S of Part 1926—Underground Construction, Caissons, Cofferdams and Compressed Air, Underground Construction in 29 CFR 1926.800

OSHA has required, under § 1926.800(k)(10)(ii), that mobile diesel-powered equipment used in ''other than gassy operations'' underground be approved by the Mine Safety and Health Administration (MSHA) in accordance with the provisions of 30 CFR part 32, or that the employer can demonstrate that the equipment is ''fully equivalent'' to MSHA-approved equipment. In 1996, MSHA revoked part 32 and replaced it with updated provisions in 30 CFR part 7, subpart E, and 30 CFR 75.1909 Non-permissible diesel-powered equipment;[7] design and performance requirements, 75.1910 Non-permissible diesel-powered equipment; electrical system design and performance requirements, and 75.1911 Fire suppression systems for diesel-powered equipment and fuel transportation units (61 FR 55412). Those sections are rules for coal mines. In 2001, MSHA issued 30 CFR 57.5067, which permits operators in metal and nonmetal mines to use engines that meet Environmental Protection Administration (EPA) requirements for engines as an alternative to seeking MSHA approval under part 7, subpart E (66 FR 5706). Under 30 CFR 57.5067, all engines used in underground metal and nonmetal mines must have an affixed plate evidencing approval of the engine pursuant to 30 CFR part 7, subpart E, or meet or exceed the applicable requirements of the EPA listed in MSHA Table 57.5067–1. OSHA proposed to update the regulatory language in § 1926.800(k)(10)(ii) to cross-reference these updated provisions. The final rule contains differences from the proposed rule. The final rule requires compliance only with § 57.5067, pertaining to underground metal and nonmetal mines, and not §§ 75.1909, 75.1910, and 75.1911(a) through (i), pertaining to underground coal mines. The final rule also contains minor technical changes to the proposed language.

OSHA received two comments on the proposed changes. One was from Caterpillar Inc. (OSHA–2012–007–0762). That comment supported the changes regarding the substitution of 30 CFR 57.5067 for former part 32, but recommended that OSHA not require compliance with §§ 75.1909, 75.1910, and 75.1911(a) through (i) of part 30. The comment explained that requiring compliance with §§ 75.1909, 75.1910, and 75.1911(a) through (i) of part 30, ''would create some conflict or, at the least, confusion . . . and inappropriately add underground coal-mining equipment requirements to equipment used in non-coal environments.''[8]

Caterpillar recommended that OSHA not require compliance with §§ 75.1909, 75.1910, and 75.1911(a) through (i) of part 30 because those standards apply to equipment used in underground coal mines, while 30 CFR 57.5067 applies to equipment used in underground metal and nonmetal mines. Caterpillar stated, and the agency agrees, that equipment used for underground construction is more closely related, and often the same, as equipment used in underground metal and nonmetal mines. Caterpillar suggested that OSHA look at alternative standards related to equipment used in underground metal and nonmetal mines (while maintaining that only requiring compliance with 30 CFR 57.5067 regarding engines is necessary), such as 30 CFR 57.14100 through 57.14162—Safety Devices and Maintenance Requirements or 30 CFR 57.5060 through 57.5075—Diesel Particulate Matter—Underground Only. After review of these MSHA standards, OSHA has determined that requiring compliance with either the Safety Devices and Maintenance Requirements or Diesel Particulate Matter—Underground Only standards would go beyond the scope of § 1926.800(k)(10)(ii) and be in conflict with other parts of subpart S. Section 1926.800(k)(10)(ii) is in the ventilation subsection and is concerned with diesel exhaust and compliance with 30 CFR 57.5067 is sufficiently equivalent to the original standard that required compliance with former part 32. Further, requiring compliance with 30 CFR 75.1909, 75.1910, and 75.1911(a) through (i) is

[7] Non-permissible equipment may not be used in gassy operations.

[8] OSHA hosted a conference call with Caterpillar to discuss its comment, a summary of which is found in the docket for this rulemaking.

actually inconsistent with 30 CFR 57.5067, as that latter section allows engines to be approved pursuant to 30 CFR part 7, subpart E, *or* meet or exceed the applicable requirements of the EPA listed in MSHA Table 57.5067–1. Therefore, OSHA agrees that the proposed rule is unworkable, and the final rule will require compliance with only 30 CFR 57.5067 as recommended.

Further, OSHA solicited comment on whether employers use the option in the current standard to demonstrate that equipment is ''fully equivalent'' to MSHA-approved equipment. OSHA received no comment on this provision, therefore all new engines used that are covered by subpart S will have to comply with 30 CFR 57.5067.

The other comment was from the Laborers' Health & Safety Fund of North America (LHSFNA) (OSHA–2012–0007–0757). This comment supported updating the reference to current MSHA regulations, but opposed the grandfathering of older equipment. As OSHA explains below, to avoid the cost of replacing current equipment, OSHA will grandfather older equipment that complies with existing § 1926.800(k)(10)(ii). OSHA notes, however, that 30 CFR 57.5067 was issued seventeen years ago, so the amount of equipment that would not be in compliance with the current requirement is not that large and will continue to diminish.

Based on available information, OSHA has determined that currently manufactured equipment meets the proposed requirements and is generally compliant with the more stringent EPA Tier 3 and Tier 4 emission requirements (ERG, 2015). The agency concludes that all applicable new equipment currently available in the market meets the final rule requirements. OSHA recognizes that there may be some employers using equipment that predates the newer MSHA standards, and the EPA requirements referenced in them. To avoid the costs of replacing existing equipment in use that are compliant with the current standard, the agency proposes to allow equipment purchased before the effective date of the final rule to continue to comply with the terms of existing § 1926.800(k)(10)(ii) (including having been approved by MSHA under 30 CFR part 32 (1995) or be determined to be equivalent to such MSHA-approved equipment).

Finally, the comment from Caterpillar pointed out that 100 ft^3 equals 2.832 m^3 (not 28.32 m^3 as stated in the existing and proposed regulatory text) and suggested a reorganization of the regulatory text for clarity. The agency agrees with this suggestion and has made the applicable change to § 1926.800(k)(10)(ii) in the final rule.

11. Subpart W of Part 1926—Rollover Protective Structures; Overhead Protection

Provisions in subpart W specify minimum performance criteria for rollover protective structures (ROPS) and overhead protection on construction equipment. The agency proposed to revise the existing standards in 29 CFR 1926.1000, 1926.1001, 1926.1002, and 1926.1003 by removing the provisions that specify the test procedures and performance requirements, and replacing those provisions with references to the underlying consensus standards from which they were derived. The substantive differences between the consensus standards and OSHA's standards are minimal. The agency also proposed to remove irrelevant text from § 1926.1000. The final rule is identical to the proposed rule except for the addition of ISO 3471:2008 to § 1926.1002 and other technical corrections. While reviewing the incorporated material for this section OSHA found outdated references to former 29 CFR 1926.1501 in § 1926.6. OSHA is removing those references in this final rule.

The original source standards for the current subpart W requirements are the Society of Automotive Engineers (SAE) Standards J320a–1970, J394–1970, J395–1970, J396–1970, J334a–1970, J167–1970, J168–1970, and J397–1969. The American National Standards Institute (ANSI) and SAE subsequently canceled these standards. To design and develop new equipment, the industry now uses the most recent International Organization for Standardization (ISO) standards: ISO 3471:2008; ISO 5700:2013; and ISO 27850:2013. Though the names of the construction equipment covered by the consensus standards have changed over time, OSHA believes that all the equipment listed in § 1926.1001(a) is covered by one of those ISO standards.

For equipment manufactured after the effective date of this final rule, OSHA proposed that it meet the test and performance requirements for the applicable ISO standards discussed below. For equipment manufactured before the effective date of this final rule, OSHA proposed that it meet the former requirements of subpart W, or the test and performance requirements for the applicable ISO standards that apply to newly manufactured equipment.

OSHA received five comments on these proposed changes. The Laborers' Health & Safety Fund of North America (LHSFNA) and the North America's Building Trades Union (NABTU) supported the revisions (OSHA–2012–0007–0757, –0742). The Association of Equipment Manufacturers (AEM), NIOSH, and Paul Ayers, a private citizen, were generally supportive of these changes and recommended technical changes (OSHA–2012–0007–0699, –0726, –0740). OSHA appreciates that input and responds to specific comments below. After considering these comments, OSHA has decided to finalize the proposed revisions to subpart W with the minor changes discussed below.

OSHA is renaming § 1926.1000 as ''Scope'' because this more accurately describes what follows in this section. Paragraph (a) lists the types of equipment covered by subpart W. The agency is also adding compactors and rubber-tired skid-steer equipment manufactured after the effective date of the final rule to paragraph (a). The ISO standards apply to compactors and skid-steer equipment as well as the other equipment included in the standard, and OSHA concludes that all compactors and skid steer equipment currently produced meet those requirements. Paragraph (b) states which standards apply to equipment manufactured before the publication of this final rule. Paragraph (c) states which standards apply to equipment manufactured after the publication of this final rule. OSHA solicited comment on whether paragraphs (d), ''*Remounting,*'' (e), ''*Labeling,*'' and (f), ''*Machines meeting certain existing governmental requirements*'' are necessary or are obsolete, but received no comment in response. These paragraphs are not in conflict with the final revisions and are unchanged in the final rule. LHSFNA specifically supported the inclusion of compactors and rubber-tired skid-steer equipment in the standard, citing research on fatalities associated with compactors (OSHA–2012–0007–0757). LHSFNA also recommended that because only equipment manufactured after the effective date of the standard will be covered by revised subpart W, OSHA should study the prevalence of ROPS on existing older compactors and rubber-tired skid-steer equipment and explore the need for a rule that would require this older equipment to be retrofitted.

Section 1926.1000(c) limited the application of the requirements of §§ 1926.1001 and 1926.1002 to equipment manufactured after July 1, 1969. OSHA is eliminating this limitation because it is OSHA's understanding that there are not any

pieces of covered equipment in operation today that are more than 45 years old and do not meet the SAE standards. OSHA received no comment on this revision.

Section 1926.1001 provides ROPS requirements for rubber-tired self-propelled scrapers, rubber-tired front end loaders, rubber-tired dozers, crawler tractors, crawler-type loaders, and motor graders. The final rule deletes the ROPS specifications for this equipment, and replaces it with a requirement that covered equipment manufactured before the effective date of the final rule comply with SAE J397–1969—Critical Zone-Characteristics and Dimensions for Operators of Construction and Industrial Machinery, SAE 320a–1970—Minimum Performance Criteria for Roll-Over Protective Structure for Rubber-Tired, Self-Propelled Scrapers, SAE J394–1970—Minimum Performance Criteria for Roll-Over Protective Structures for Rubber-Tired Front End Loaders and Rubber-Tired Dozers, SAE J395–1970—Minimum Performance Criteria for Roll-Over Protective Structure for Crawler Tractors and Crawler-Type Loaders, and SAE J396–1970—Minimum Performance Criteria for Roll-Over Protective Structure for Motor Graders, as applicable. The final rule requires equipment manufactured after the effective date of the final rule (including compactors and rubber-tired skid-steer equipment) to meet the requirements of ISO 3471:2008, Earth-moving machinery—Roll-over protective structures—Laboratory tests and performance requirements. This standard contains specifications for ROPS to protect employees. Because, as noted above, OSHA believes that covered equipment is already being manufactured to the requirements of ISO 3471:2008, the final rule provides the option for equipment manufactured before the effective date of the final rule to comply with the ISO standard rather than the SAE standards.

Section 1926.1002 provides ROPS requirements for wheel-type agricultural equipment and industrial tractors used in construction. The final rule deletes the ROPS specifications for this equipment, and replaces it with a requirement that covered equipment manufactured before the effective date of the final rule comply with SAE J168–1970—Protective Enclosures—Test Procedures and Performance Requirement and SAE J334a–1970-Protective Frame Test Procedures and Performance Requirements, as applicable. The final rule requires equipment manufactured after the effective date of the final rule meet the requirements of ISO 5700:2013, Tractors for agriculture and forestry—Roll-over protective structures—Static test method and acceptance conditions. This standard contains specifications for ROPS to protect employees. Because, as noted above, OSHA believes that covered equipment is already being manufactured to the requirements of ISO 5700:2013, the final rule provides the option for equipment manufactured before the effective date of the final rule to comply with the ISO standard rather than the SAE standards. OSHA solicited comment on whether any equipment covered by § 1926.1002 that complies with ISO 3471:2008, the standard for earth-moving machinery, should be considered in compliance for ROPS. The comment from AEM noted that ISO 3471:2008 could be used for equipment covered by § 1926.1002 (OSHA–2012–0007–0699). Therefore, because ISO 3471:2008 requires testing at higher levels of energy than ISO–5700:2013, compliance with either ISO–5700:2013 or ISO 3471:2008 for equipment covered by § 1926.1002 is included in the final rule.

AEM also recommended updating the consensus standard that is used in prior § 1926.1002(j)(1) [now § 1926.1002(e)(1)] for the definition of ''agricultural tractor.'' OSHA is not changing the scope of equipment covered by § 1926.1002 and believes that the current definition does not require a change to be compatible with the revisions. OSHA appreciates AEM's recommendations to update this definition and to include various other standards as possible options for § 1926.1002. OSHA acknowledges that there are other consensus standards that may apply to equipment covered by subpart W. However, OSHA has chosen to adopt the ISO standards that most closely align to the current regulatory structure of subpart W.

Section 1926.1003 provides design and installation requirements for the use of overhead protection for operators of agricultural and industrial tractors used in construction. The final rule deletes the current overhead protection specifications for this equipment, and replaces it with a requirement that covered equipment manufactured before the effective date of the final rule comply with SAE J167–1970—Overhead Protection for Agricultural Tractors—Test Procedures and Performance Requirements when using overhead protection. The final rule requires equipment manufactured after the effective date of the final rule meet the requirements of ISO 27850:2013, Tractors for agriculture and forestry—Falling object protective structures—Test procedures and performance requirements when using overhead protection. This standard contains specifications for overhead protection to protect employees. Because, as noted above, OSHA concludes that overhead protection, when used, is manufactured to the requirements of ISO 27850:2013, the final rule provides the option for equipment manufactured before the effective date of the final rule to comply with the ISO standard rather than the SAE standards. NIOSH noted that ISO 27850:2013 is not the most recent industry standard (OSHA–2012–0007–0726), but AEM recommended that OSHA incorporate ISO 27850:2013 in § 1926.1003 (OSHA–2012–0007–0699). OSHA is finalizing the use of ISO 27850:2013 in § 1926.1003. AEM also recommended that OSHA incorporate ISO 3449:2005 in subpart W but OSHA is not incorporating it because there is no equivalent consensus standard in subpart W for this ISO to update.

The comment from AEM (OSHA–2012–0007–0699) asked that OSHA remove the references to the outdated SAE standards. NIOSH also noted that SAE J334a–1970 is not the current version of that standard (OSHA–2012–0007–0726). OSHA is aware that the old SAE standards have been canceled. But they were the original source standards for subpart W, and OSHA is grandfathering older equipment that met the requirements of the original subpart W and thus the original source standards. For these reasons, OSHA is retaining these source standards in the final rule but it will consider this request for any future rulemaking it undertakes on subpart W. AEM also requested that OSHA remove the prescriptive tests in subpart W, as proposed, and replace them with the ISO standards, which OSHA has done in this final rule. Finally, AEM recommended that OSHA ''acknowledge the protective structures compliant with the current industry standards incorporated by reference and judged to fully comply with OSHA 1926.1002 and 1926.1003.'' The final rule does state older equipment that meets the requirements of the current standards required for new equipment will be in compliance with subpart W. AEM and Paul Ayers also noted that there is a conversion error in subpart W, and Ayers notes that the same error is also in 29 CFR 1928.52, OSHA's rule for agriculture on protective enclosures for tractors (OSHA–2012–0007–0699, –0740). That error is eliminated in subpart W, as the prescriptive tests are deleted by this final rule. Amending the agriculture standard is beyond the scope

of this SIP–IV rulemaking, but OSHA takes note of the error.

12. Subpart Z of Part 1926—Toxic and Hazardous Substances, Coke Oven Emissions in 29 CFR 1926.1129

Section 1926.1129 regulates exposure to coke oven emissions in construction. In 1993, OSHA incorporated this standard into part 1926 (58 FR 35256, June 30, 1993) and in 1996 revised it to be just a reference to the identical general industry standard (29 CFR 1910.1029; 61 FR 31428, June 20, 1996). In neither rulemaking did OSHA discuss, in particular, the application of the coke oven standard to construction, as it was only one of many standards involved in each rulemaking. The provisions of the coke oven standard, however, do not fit construction work. OSHA thus proposed to delete § 1926.1129. The final rule enacts the proposed deletion without any other changes.

As just stated, the coke oven standard does not fit construction work. Much of the standard regulates exposure in the ''regulated area.'' (See 29 CFR 1910.1029(d)). But this ''regulated area'' is limited, including only ''[t]he coke oven battery including topside and its machinery, pushside and its machinery, coke side and its machinery, and the battery ends; the wharf; and the screening station [and the] beehive oven and its machinery'' (§ 1910.1029(d)(2)(i) and (ii)). As stated in an interpretation issued nearly contemporaneously with the general industry coke oven emissions standard, ''[t]he ground level around the base of the coke oven battery is not generally considered in the regulated area unless work related to coke oven operations take place. The coke oven regulation, 29 CFR 1910.1029, does not apply to employees walking past coke ovens or between them.'' (Interpretation memorandum to White, May 17, 1977). Any work operating the coke ovens is general industry work. OSHA recognized this issue in the 1990s, when it stated that the coke oven construction standard was ''invalid,'' and that OSHA intended to remove it from the Code of Federal Regulations. (Interpretation letter to Katz, June 22, 1999). OSHA also advised its Regional Offices in 2005 of this interpretation and that they should not enforce § 1926.1129. OSHA's inspection database contains no record of a citation under this standard since 1997.[9] For this reason, OSHA proposed to delete § 1926.1129.

[9] There were a few citations between 1993 and 1997.

OSHA received three comments on the proposed deletion, each asking OSHA to retain § 1926.1129. The North America's Building Trades Unions commented that, ''there are still 17 coke oven plants, with 54 batteries, that required industrial construction workers to perform tasks such as patching and replacing refractory bricks and other maintenance, work that potentially overexposes these workers to coke oven emissions'' (OSHA–2012–0007–0742). Based on this limited information about what the workers are doing, the work described in this scenario is likely covered by § 1910.1029, even if the work is done by ''industrial construction workers.'' The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW) describes work covered by § 1910.1029 as ''heavy maintenance,'' encompassing ''[r]ebuilding, and rebricking ovens, changing doors, rebuilding and replacing equipment'' within the regulated area (OSHA–2012–0007–0764). In this example as well, based on the limited information about what the workers are doing, OSHA thinks it is likely that the work described is covered by § 1910.1029.

The Laborers' Health & Safety Fund of North America commented that eliminating § 1926.1129 could cause companies to respond by ''reclassifying work as construction work, thus exempting them from the regulation'' (OSHA–2012–0007–0757). The USW also states that ''OSHA should avoid giving [employers] such an incentive'' to reclassify work (OSHA–2012–0007–0764). Employers do not determine whether or not work is covered by the construction or general industry standards. The work itself is used to determine if it will be considered maintenance or construction. An employer whose employees are engaged in general industry work may not avoid compliance with general industry standards by ''classifying'' the work as construction.

Additionally, the USW commented that construction workers laboring near a coke oven would be deprived of ''respirators, protective clothing and personal hygiene measures'' if § 1926.1129 were to be removed (OSHA–2012–0007–0764). This is not the case. First, § 1910.1029, as discussed above, only covers the ''regulated area.'' Second, 29 CFR part 1926 contains a number of standards that apply to construction workers laboring near an active coke oven. For example, the provisions of 29 CFR part 1926, subpart C—General Safety and Health Provisions, 29 CFR part 1926, subpart D—Occupational Health and Environmental Controls, and 29 CFR part 1926, subpart E—Personal Protective and Life Saving Equipment apply to construction work near coke ovens.[10] Because § 1926.1129 is invalid, employers of construction workers who work near coke ovens must follow the provisions of the construction standards as a whole, but do not have to follow the specific standard § 1910.1029, which applies to general industry work.

Because, in effect, the standard does not address construction worker exposures to coke oven emissions, this removal will not reduce the level of protection for workers. To the extent any construction workers would in the future be exposed to coke oven emissions and there is no applicable construction standard that addresses the specific hazard, OSHA could cite the employer under the General Duty Clause (29 U.S.C. 654(a)(1)). After considering these comments, OSHA is proceeding with the removal of § 1926.1129. OSHA is also removing the reference to § 1926.1129 in § 1926.55, Table 1.

13. Additional Revisions to Paragraphs and Appendices in 29 CFR Parts 1910, 1915, and 1926 To Remove Social Security Number Collection Requirements

OMB requires all federal agencies to identify and eliminate unnecessary collection and use of Social Security Numbers (SSN) in agency systems and programs (see Memorandum from Clay Johnson III, Deputy Director for Management, Office of Management and Budget, to the Heads of Executive Departments and Agencies Regarding Safeguarding Against and Responding to the Breach of Personal Identifiable Information (M–07–16), May 22, 2007 (available at: *georgewbush-whitehouse.archives.gov/omb/memoranda/fy2007/m07-16.pdf*)). Recognizing the seriousness of the threat of identity theft and the availability of other methods for tracking employees for research purposes, if needed, OSHA examined

[10] An Administrative Law Judge with the Occupational Safety and Health Review Commission has upheld a citation for violation of § 1926.51(f), requiring washing facilities when construction workers in the regulated area were exposed to coke dust, and a citation for violation of § 1926.59, requiring employers to provide employees with information and training on hazardous chemicals. The Review Commission affirmed the violation of § 1926.51(f) (the other violation was not at issue before the Commission). *McGraw Construction Co, Inc.,* 1991 WL 494789 (No. 89–2220, Jan. 11, 1991) (ALJ Decision), *aff'd in part,* 15 BNA OSHC 2144 (No. 89–2220, Feb. 1, 1993),

the SSN collection requirements in its standards. Based on this review, OSHA proposed in the SIP–IV NPRM removing all requirements in its standards to include employee SSNs on exposure monitoring, medical surveillance, or other records in order to facilitate employers' efforts to safeguard employee privacy. Specifically, OSHA proposed deleting the requirements to include an employee's SSN from 19 standards. The final rule is identical to the proposed rule.

The 19 standards proposed for revision are as follows:

- Hazardous Waste Operations and Emergency Response—§§ 1910.120(f)(8)(ii)(A) and 1926.65(f)(8)(ii)(A);
- Asbestos—§§ 1910.1001(m)(1)(ii)(F), (m)(3)(ii)(A), and appendix D, 1915.1001(n)(2)(ii)(F), (n)(3)(ii)(A), and appendix D, and 1926.1101(n)(2)(ii)(F), (n)(3)(ii)(A), and appendix D;
- Vinyl Chloride—§ 1910.1017(m)(1);
- Inorganic Arsenic—§ 1910.1018(q)(1)(ii)(D) and (q)(2)(ii)(A);
- Lead—§§ 1910.1025(d)(5), (n)(1)(ii)(D), (n)(2)(ii)(A), (n)(3)(ii)(A), and appendix B and 1926.62(d)(5), (n)(1)(ii)(D), (n)(2)(ii)(A), (n)(3)(ii)(A), and appendix B;
- Chromium (VI)—§§ 1910.1026(m)(1)(ii)(F) and (m)(4)(ii)(A), 1915.1026(k)(1)(ii)(F) and (k)(4)(ii)(A), and 1926.1126(k)(1)(ii)(F) and (k)(4)(ii)(A);
- Cadmium—§§ 1910.1027(n)(1)(ii)(B), (n)(3)(ii)(A), and appendix D and 1926.1127(d)(2)(iv), (n)(1)(ii)(B), and (n)(3)(ii)(A);
- Benzene—§ 1910.1028(k)(1)(ii)(D) and (k)(2)(ii)(A);
- Coke Oven Emissions—§ 1910.1029(m)(1)(i)(*a*) and (m)(2)(i)(*a*);
- Bloodborne Pathogens—§ 1910.1030(h)(1)(ii)(A);
- Cotton Dust—§ 1910.1043(k)(1)(ii)(C), (k)(2)(ii)(A) and appendices B–I, B–II, and B–III;
- 1,2 Dibromo-3-Chloropropane—§ 1910.1044(p)(1)(ii)(*d*) and (p)(2)(ii)(*a*);
- Acrylonitrile—§ 1910.1045(q)(2)(ii)(D);
- Ethylene Oxide—§ 1910.1047(k)(2)(ii)(F) and (k)(3)(ii)(A);
- Formaldehyde—§ 1910.1048(o)(1)(vi), (o)(3)(i), (o)(4)(ii)(D), and appendix D;
- Methylenedianiline—§§ 1910.1050(n)(3)(ii)(D), (n)(4)(ii)(A), and (n)(5)(ii)(A) and 1926.60(o)(4)(ii)(F) and (o)(5)(ii)(A);
- 1,3-Butadiene—§ 1910.1051(m)(2)(ii)(F), (m)(4)(ii)(A), and appendix F;
- Methylene Chloride—§ 1910.1052(m)(2)(ii)(F), (m)(2)(iii)(C), (m)(3)(ii)(A), and appendix B;
- Respirable Crystalline Silica—§§ 1910.1053(k)(1)(ii)(G) and (k)(3)(ii)(A) and 1926.1153(j)(1)(ii)(G) and (j)(3)(ii)(A).

OSHA received a total of seven comments in response to this proposal, six of which expressed support for deleting the requirements to include an employee's SSN from the standards mentioned above.

The North American Insulation Manufacturers Association (NAIMA) stated that they ''strongly support'' the deletion of SSN collection requirements ''because inclusion of such information on medical documents compromises employee's personal information and creates a liability scenario for employers.'' The American Foundry Society (AFS) also supported removing the SSN collection requirements from OSHA's standards. AFS stated that there is no justification for including such sensitive information on data sheets or reports that may go to analytical laboratories or be seen by dozens of people in non-secure environments. AFS recommended that employers could instead use the unique employee identification number that employers may use for personnel and other records, which can be linked back to an employee's SSN without compromising security.

The Construction Industry Safety Coalition (CISC) commented that it ''wholeheartedly'' agrees with OSHA's proposal and believes that there are safer and better alternatives than SSNs to identify employees. CISC also supported OSHA's statements in the proposal that employers would not be required to go back and delete employee SSNs from existing records, would not be required to use an alternative unique employee identifier on existing records, and would still be permitted to use SSNs if they wish to do so, and encouraged OSHA to specifically reference these statements in the final rule to clarify employers' responsibilities regarding existing and future records. CISC further recommended that OSHA not mandate a specific type of alternative identification method for employers to use in lieu of SSNs because limiting employers' flexibility to come up with an identification system that works best for their unique situations would be burdensome and difficult to implement.

One commenter, an anonymous public citizen, expressed concern that removing the SSN collection requirements from exposure monitoring and surveillance records would affect employers' ability to identify employees on records. The commenter stated that if employers were required to remove SSNs from existing records, it ''would be daunting and conflict with NARA requirements.'' The commenter also expressed concern that using alternative unique employee identifiers could complicate employer efforts to secure existing records and/or lead to similar employee privacy concerns as those posed by SSNs. OSHA appreciates the commenter's concerns; however, OSHA believes that the seriousness of the threat of identity theft outweighs the concerns raised by the commenter.

After considering these comments, OSHA has decided to remove the SSN collection requirements from the standards listed above, as proposed in the NPRM. Consistent with the proposal, OSHA is not otherwise altering OSHA's requirements for maintaining records, and employers are expected to continue handling previously-generated records that contain SSNs as they currently do. Employers are not required to delete employee SSNs from existing records, nor are employers required to include an alternative unique employee identifier on those records. OSHA is not mandating a specific type of identification method that employers should use on newly-created records, but is instead providing employers with the flexibility to develop a system that best works for their unique situations. Although the revised standards will no longer require it, employers who wish to do so may continue using SSNs on records developed in compliance with the standards noted above. Accordingly, removing the SSN collection requirements will not increase an employer's compliance burden under any of the revised standards.

Additionally, as noted in the proposal, when reviewing forms to remove their SSN collection requirements, OSHA noticed that several forms from older standards do not comport with OMB's Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity, as updated on October 30, 1997 (62 FR 58782–58790). OSHA thus explained that it was considering revising those forms to either update the language to ensure compliance with OMB's standards or remove the question altogether. The final rule makes those revisions to comply with OMB standards. The final rule also effects a minor change to a question in a general industry Cadmium standard questionnaire.

As one example from the proposal, Part 1 (''Initial Medical Questionnaire'') of appendix D of the asbestos standard for general industry (29 CFR 1910.1001)

includes a question (currently #15) that states:

Race:
1. White ____
2. Black ____
3. Asian ____
4. Hispanic ____
5. Indian ____
6. Other ____

To reflect a combined race and ethnicity format (see 62 FR 58782, 58789), OSHA proposed revising the language to state:

Race:
1. White ____
2. Black or African American ____
3. Asian ____
4. Hispanic or Latino
5. American Indian or Alaska Native ____
6. Native Hawaiian or Other Pacific Islander ____

OSHA requested comments on whether it should revise the forms in this manner, and whether doing so would impose any additional burden hours or costs on employers.

The agency only received one comment on this issue. NIOSH recommended that OSHA continue to collect race and ethnicity information in compliance with the Office of Management and Budget's (OMB) standards. NIOSH stated that, in some cases, this information may be necessary to choose the correct reference equation for interpretation of spirometry results, and that possessing this information may also be useful for documenting disparities. NIOSH suggested that OSHA provide instructions to those who provide information using the combined format that they should check all categories that apply to them, since race and ethnicity are not mutually exclusive, and many Americans have mixed racial and ethnic backgrounds. NIOSH also pointed out that OMB's standards combine ''Native Hawaiian or Other Pacific Islander'' into a single category and does not separate them, as OSHA appeared to do in the proposal. OSHA did not propose to separate those two categories; it only appeared that way due to the spacing in the proposal.

After considering this comment, OSHA has decided to revise its older forms to use a combined race and ethnicity format, as demonstrated above for Part 1 (''Initial Medical Questionnaire'') of appendix D of the asbestos standard for general industry (29 CFR 1910.1001), in order to bring the forms into compliance with OMB's standards. The following forms, which are also impacted by the removal of SSN collection requirements, will be revised to use the combined race and ethnicity format: Asbestos Standard for General Industry (§ 1910.1001, appendix D), Construction (§ 1926.1101, appendix D), and Maritime (§ 1915.1001, appendix D); Cotton Dust (§ 1910.1043, appendix B–1, appendix B–II, and appendix B–III); and Methylene Chloride (§ 1910.1052, appendix B). OSHA is accepting NIOSH's recommendation to adhere to the OMB's Standards and is inserting a ''Check all that apply'' instruction to all the forms that are impacted.

Additionally, when reviewing forms to remove their SSN collection requirements, OSHA noticed that appendix D of the general industry Cadmium standard (§ 1910.1027) asked workers, ''35. Have you or your partner ever conceived a child resulting in a miscarriage, still birth or deformed offspring?'' OSHA recognizes that the phrasing of the last condition was insensitive and not medically accurate. Therefore, OSHA is rephrasing that question to read, ''35. Have you or your partner ever conceived a child resulting in a miscarriage, still birth or child with malformations or birth defects?''

C. Proposed Revisions Not Being Finalized Today

Subpart J of Part 1910—General Environmental Controls, Control of Hazardous Energy (Lockout/Tagout) in 29 CFR 1910.147

OSHA proposed making changes to subpart J of part 1910—General Environmental Controls, The control of hazardous energy (lockout/tagout) in 29 CFR 1910.147. According to its terms, the lockout/tagout standard applies to servicing and maintenance operations ''in which the *unexpected* energization or startup of the machines or equipment, or the release of stored energy could cause injury to employees'' (§ 1910.147(a)(1)(i) (emphasis in original)). Because OSHA believes the word ''unexpected'' has been misinterpreted to exclude some operations where employees are subject to injury from startup or the release of stored energy, the agency proposed removing the word ''unexpected'' from § 1910.147(a)(1) and several other places it appears in the standard.

OSHA made this proposal as a result of a ruling made by the Occupational Safety and Health Review Commission (OSHRC), which was affirmed by the United States Court of Appeals for the Sixth Circuit. *Reich* v. *General Motors Corp., Delco Chassis Div.* (GMC Delco), 17 BNA OSHC 1217 (Nos. 91–2973, 91–3116, 91–3117, 1995); aff'd 89 F.3d 313 (6th Cir. 1996). Those decisions found that the lockout/tagout standard did not apply where a startup procedure for a machine provided a warning to a worker servicing it that it was about to start. In that case, workers were servicing machines that used an eight-to-twelve-step startup procedure, including time delays, and audible or visual warnings. The court and OSHRC held that, because these features would warn the servicing employees that the machines were about to start, the startup would not be ''unexpected.'' OSHA believes that the *GMC Delco* decisions misconstrued the ''unexpected'' language of the lockout/tagout standard by allowing employers to use warning and delay systems as alternatives to following the requirements of the standard.

OSHA received about 155 comments on this issue, though many were submitted as part of a mass mailing campaign. All but seven of the comments opposed removing the word ''unexpected.''

As an example, Davies Molding, LCC, a firm that makes moldings, commented (as part of a mass mail campaign) that:

> This proposed rule would adversely impact a company's ability to utilize certain advances in technology such as automated controls that can eliminate the potential for unexpected energization and therefore eliminate the need for LOTO. It also contradicts recent legal precedent (Reich v. General Motors Corp., Delco Chassis Div., GMC Delco). In removing the ability of employers to demonstrate the absence of exposure to unexpected energization, lockout would become a requirement for all energy sources. . . . Regulatory certainty is strongly desired, but not every machine is the same and a singular, generic fix applied to all equipment is not the solution. OSHA's LOTO rule (29 CFR 1910.147) is complex and outdated. A better solution to concerns about LOTO and the scope of requirements around energization is for OSHA to move forward with its plans to review and potentially update the entire rule in a complete and independent rulemaking. OSHA has noted review of technological advancements with computer-based controls, greater acceptance of such methods internationally, increased requests for variances for these devices, the utility of understanding new technology and potential hazards to workers, and the appropriateness of a potential rulemaking process is necessary.

(OSHA–2012–0007–0581).

Apogee Designs, a manufacturer, commented:

> Removing ''unexpected'' from the term ''unexpected energization'' broadens the scope of the rule adding only confusion to what is already understood and implemented. We agree with the Plastics Industry Association (PIA) in that OSHA should pursue a separate rule relating to 29 CFR 1910.147 that would NOT adversely impact automated controls that eliminate

potential unexpected energization. . . . If changes are made to the LOTO rule they should be reviewed in their totality in the context of modern manufacturing techniques and technology. Much has been said of 'Advanced Manufacturing' and its ability to provide jobs for employees and opportunities for firms who wish to embrace what is no longer the future but is 'the now'. We submit that OSHA focus on how to minimize risk of personnel harm without placing undue burden on employees, companies, and regulators. It is not possible to eliminate accidents, it is possible to minimize their impact.

(OSHA–2012–0007–0733).

The American National Standards Institute Accredited Z244 Committee for the Control of Hazardous Energy—Lockout, Tagout and Alternative Methods also commented that the removal of the word ''unexpected'' would be inconsistent with its standard ANSI/ASSE Z244.1 (OSHA–2012–0007–0714).

In favor of removal, the AFL–CIO commented:

This decision [*GMC Delco*] totally undermines the original intent of the standard and allows warning systems to be used instead of following the requirements of the standard. As OSHA points out in the preamble of the proposed rule, the exclusive use of warning systems subverts the intent of the standard by removing the control of the hazardous energy from the individual authorized employee and instead placing the burden on exposed employees to recognize warnings so they can escape danger zones . . . . Moreover, this decision requires OSHA to make a case-by-case determination of whether or not such warning systems provide adequate and reliable warnings to workers again undermining the application of the rule and the protection of workers. . . . .

If OSHA choses[sic] to maintain the term ''unexpected'' in the standard, we urge OSHA to include a definition of the term ''unexpected'' in the final version of this rule similar to the definition that is included in the OSHA Lockout-Tagout compliance directive. That directive states that ''the term unexpected refers to any energization or start-up that is not sanctioned (through the removal of personal LOTO devices) by each authorized employee engaged in the servicing and maintenance activity.'' (CPL 02–00–147)

(OSHA–2012–0007–0761).

OSHA continues to believe that the GMC Delco decisions misconstrued the ''unexpected'' language of the lockout/tagout standard. However, OSHA also acknowledges the overwhelming opposition to this change and agrees with the many comments that cited complications with this issue due to technological advancements. Further, the AFL–CIO included in its comment a proposal of a path OSHA could follow to uphold the rigor of the proposed rule. In light of the information provided by the comments, OSHA is not in a position at this time to make a final decision on this issue. As a result, the agency will not finalize its proposal to remove the word ''unexpected'' from the control of hazardous energy standard but will further consider this issue in light of the overall standard.

Subpart E of Part 1926—Personal Protective and Life Saving Equipment, Criteria for Personal Protective Equipment in 29 CFR 1926.95

Section 1926.95 sets out the requirements for personal protective equipment (PPE) in construction. In the NPRM, OSHA proposed to revise this standard to explicitly require that PPE used in construction properly fit each affected worker.

OSHA received four comments on this proposal. The Laborers' Health & Safety Fund of North America (LHSFNA) and North America's Building Trades Unions (NABTU) both supported the revision (OSHA–2012–0007–0757, –0742). A third comment from a safety professional supported the revision, but mentioned ''significant concerns'' that ''need to be addressed'' before finalizing the proposal (OSHA–2012–0007–0696). The comment characterized the change as a ''difficult'' and ''bold step'' with definite compliance challenges. A fourth comment, from the Construction Industry Safety Coalition (CISC), opposed the revision (OSHA–2012–0007–0753). CISC, made up of 25 trade associations, stated that ensuring that PPE properly fits all affected workers in construction would impose significant additional obligations. CISC commented in particular that explicitly requiring employers to ensure that all PPE properly fits would greatly change the standard and place new responsibilities on employers, and warrants a more fulsome rulemaking process than that offered in the SIP–IV rulemaking.

The purpose of SIP–IV is to remove or revise outdated, duplicative, unnecessary, and inconsistent requirements in OSHA's safety and health standards. Given that limited purpose and the comments described above, OSHA is not finalizing the proposal in this rulemaking. Instead, OSHA has determined that such a change to the PPE standard should occur in a separate rulemaking outside the limited SIP process. OSHA anticipates that this approach would provide the public with broader notice of the proposal, encourage robust commentary, and better inform OSHA's approach to employer obligations and worker safety in relation to PPE used in construction.

Subpart P of Part 1926—Excavations, Specific Excavation Requirements in 29 CFR 1926.651

Paragraphs (j)(1) and (2) of § 1926.651 specify requirements for employers to protect employees from (1) loose rock or soil in excavations, and (2) excavated or other materials or equipment that could fall or roll into an excavation. Similar provisions were part of OSHA's subpart P Excavation standard originally issued under the Construction Safety Act in 1971 as 29 CFR 1518.651(h) and (i) (36 FR 7340, 7389, April 17, 1971), and OSHA retained them when it revised the standard in 1989 (54 FR 45894, Oct. 31, 1989). The original 1971 standard placed the burden on employers to ensure employees' safety from loose rock and soil, and excavated or other materials, in or around excavations (36 FR 7340, 7389). The 1989 revision added to the paragraphs (j)(1) and (2) the phrase ''that could pose a hazard'' when referring to loose rock or soil and excavated or other materials or equipment (54 FR 45894, 45924–45925).

In the SIP–IV NPRM, OSHA proposed to remove the phrase ''that could pose a hazard'' from both paragraphs to help clarify that the burden is on the employer to ensure employees' safety from loose rock and soil, and excavated or other materials, in or around excavations, and that OSHA does not have to establish that loose rock or soil or excavated or other material or equipment poses a hazard to employees before it can establish a violation of § 1926.651(j)(1) and (2).

OSHA received six comments on this proposed change. The Laborers' Health & Safety Fund of North America (LHSFNA) and the North American Building Trades Union (NABTU) both supported this revision, both stating that spoil piles pose a recognized hazard (OSHA–2012–0007–0742, –0757).

Emmanuel Omeike, a safety professional, commented that this proposal is unnecessary and does not address the ongoing hazards and high rates of injuries and fatalities due to excavation work. He argued that the excavations standard is already comprehensive enough, and OSHA should focus on enforcing the current standard (OSHA–2012–0007–0696).

The National Utility Contractors Association (NUCA) and Construction Industry Safety Coalition (CISC) both expressed opposition to this revision (OSHA–2012–0007–0654, –0753). Both argued that the 1989 revision to the Excavation standard did make a substantive change to the standard,

which was OSHA's intent when it clarified the standard. They also argued that the existing language recognizes that loose rock or soil or excavated or other material or equipment do not always pose a hazard to employees, and it clearly informs employers that they must protect employees from loose rock or soil or excavated or other material or equipment when it does pose a hazard.

The National Association of Homebuilders (OSHA–2012–007–0747) joined in the CISC comment, and also recommended that OSHA revise the excavations standard to add the work practices that are outlined in the OSHA memorandum ''Suspension of 29 CFR 1926.652 to House Foundations/Basement Excavations'' for protecting house foundation/basement excavations in either SIP–IV or a separate rulemaking. That recommendation is beyond the scope of SIP–IV.

In the SIP–IV NPRM, OSHA also proposed removing the language ''by falling or rolling from an'' from § 1926.651(j)(1) because that language is unnecessary while retaining the term ''excavation face'' in the provision. NUCA opposed the removal of this language for the same reasons it opposed the removal of ''that could pose a hazard'' (OSHA–2012–0007–0654).

After considering these comments, OSHA has decided that it needs to further consider the possible removal of the phrase ''that could pose a hazard'' from § 1926.651(j)(1) and (2) and the language ''by falling or rolling from an'' from § 1926.651(j)(1). As a result, OSHA is not making any changes to these two provisions in this final rule.

Subpart S in Part 1926—Underground Construction, Caissons, Cofferdams and Compressed Air, Compressed Air in 29 CFR 1926.803

OSHA proposed to revise subpart S—Underground Construction, Caissons, Cofferdams, and Compressed Air, by replacing the decompression tables currently found in appendix A to subpart S with the 1992 French Air and Oxygen decompression tables (French). OSHA also requested comment on whether the following decompression tables should also be permitted as substitutes for the existing tables in appendix A: The Edel-Kindwall (NIOSH) tables, the Blackpool (British) tables, and the German Standard Decompression (German) tables. After reviewing the comments, discussed below, OSHA has determined that while the decompression tables need to be updated, SIP–IV is not the appropriate mechanism to carry out a broader update of subpart S. In addition to the decompression tables, subpart S, as it relates to decompression, needs to be updated in its entirety. The agency considered the effect of only updating the tables, as proposed, but has determined they would conflict with and not solve other problems with the current standard. A full explanation of the proposal and discussion of the decompression tables is found at 81 FR 68503, 68520.

OSHA received three comments, each offering support for the use of the French tables. The Laborers' Health & Safety Fund of North America (LHSFNA) and the North American Building Trades Union (NABTU) stated they are ''glad to see OSHA's proposal to update this standard and adopt the French tables, which can also be used for oxygen decompression and at pressures higher than those in the original OSHA standard'' (OSHA–2012–0007–0757 and OSHA–2012–0007–0742). This comment highlights the difficulty with only updating the tables without updating other parts of the standard. While the French tables are designed to be used at higher pressures and for oxygen decompression, OSHA did not propose in SIP–IV to revise the parts of subpart S that limit the amount of pressure an employee can be subjected to or limit the use of oxygen. OSHA believes that only updating the decompression tables, without updating other parts of the standard, would lead employers to believe they can use parts of the French tables that would violate the current standard. Both commenters also requested that contractors be given the option to use the British, Edel-Kindwall, German, or Navy tables. As part of further study of this issue, OSHA will continue to consider which tables are acceptable for use in underground construction.

OSHA also received a comment from the National Institute for Occupational Safety and Health (NIOSH) that supported the updating of the decompression standard in a manner that goes beyond the scope of the proposed rule. NIOSH recommended that OSHA take the following steps when updating the decompression tables: ''[r]equire staged decompression, allow 100 percent oxygen use during decompression, vary the decompression schedule based on exposure time, and allow for greater pressures in underground construction projects'' (OSHA–2012–0007–0726). NIOSH also recommended that OSHA adopt the Edel-Kindwall tables, and noted that additional decompression tables exist. Finally NIOSH agreed that the standard would need to be updated if an oxygen-based set of decompression tables were selected.

Each of the comments were supportive of OSHA's efforts to update the decompression standard, including the tables. However, each of the comments highlighted the challenges and problems that present themselves by only updating to the French tables (or any of the tables discussed). OSHA agrees that the limitations on pressure and the use of oxygen in the current standard are not compatible with any of the modern decompression tables. OSHA acknowledges that these issues were discussed in the proposed rule, but has determined that SIP–IV is not the appropriate mechanism to update subpart S. While OSHA is not updating the tables in this rulemaking as proposed, the agency is considering how to best move forward with updating the decompression standard. The proposed revisions to 29 CFR 1926.803(f)(1) and appendix A to subpart S are not being finalized.

IV. Final Economic Analysis and Final Regulatory Flexibility Act Analysis

Executive Orders 12866 and 13563 require that OSHA estimate the benefits, costs, and net benefits of regulations. Executive Orders 12866 and 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1532(a)) also require OSHA to estimate the costs, assess the benefits, and analyze the impacts of certain rules that the agency promulgates. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

This rule is not an ''economically significant regulatory action'' under Executive Order 12866 or UMRA, and it is not a ''major rule'' under the Congressional Review Act (5 U.S.C. 801 *et seq.*). The expected total cost savings per year are $6,066,000. Given that these are all annual cost savings, the final estimate is the same when discounted at either 3 or 7 percent. For the same reason, when the Department uses a perpetual time horizon to allow for cost comparisons under E.O. 13771, the annualized cost savings of the final rule are also $6,066,000 with 7 percent discounting. This rule has estimated annual costs of $32,440 and will lead to approximately $6.1 million per year in cost savings to regulated entities. Thus, neither the benefits nor the costs of this rule exceed $100 million. In addition, it does not meet any of the other criteria specified by UMRA or the Congressional Review Act for a significant regulatory action or major rule. This Final Economic Analysis (FEA) addresses the

costs, cost savings and benefits of this rule.

Work-Related Hearing Loss

OSHA is adding a specific cross-reference to 29 CFR 1904.5—Determination of Work-Relatedness, in § 1904.10—Recording Criteria for Cases Involving Occupational Hearing Loss, paragraph (b)(6). This cross-reference clarifies that employers must comply with the provisions of § 1904.5 when making a determination as to whether a worker's hearing loss is work-related. This clarification does not change any of the requirements in 29 CFR 1904.10. In the Preliminary Economic Analysis (PEA), OSHA determined that neither new costs nor compliance burdens would result from adding the cross-reference to an existing standard. As discussed in the Summary and Explanation of the Final Rule (Summary and Explanation), while some commenters, such as the Construction Industry Safety Coalition (OSHA–2012–0007–0753), expressed concern that the proposed language may increase their required reporting of hearing loss cases, the agency explained in detail in that section why this clarification does not impose any new obligations on employers.[11] With that in mind, OSHA retains its assessment from the PEA that this provision does not impose new costs on employers.

Chest X-Ray Requirements

Medical surveillance requirements in health standards are designed primarily to detect the early onset of adverse health effects so that appropriate interventions can be taken. In certain OSHA standards, the agency currently requires periodic chest X-rays (CXRs) as a form of early lung cancer detection. At the time these standards were promulgated, routine screening for lung cancer with CXR was considered appropriate; however, recent studies with many years of follow-up have not shown a benefit from CXR screening for either lung cancer incidence or mortality. As a result, OSHA is removing the requirement for periodic CXR in the following standards: §§ 1910.1029—Coke Oven Emissions, 1910.1045—Acrylonitrile, and 1910.1018—Inorganic Arsenic.

As OSHA has become increasingly aware of the ineffectiveness of CXR in reducing lung cancer mortality, the agency has moved to decrease CXR requirements to eliminate unnecessary radiation to workers as well as reduce the cost to employers to provide CXR as part of medical examinations. OSHA previously reduced the frequency of CXRs for workers covered by the arsenic and coke oven emissions standards in the first phase of the Standards Improvement Process (63 FR 33450, June 18, 1998). Not only does OSHA conclude that the removal of this requirement will result in a cost savings to employers, but the agency also believes it will prove to be beneficial to employees by decreasing their exposure to radiation as well as decreasing the rate of false positive results. OSHA has not attempted to quantify these benefits in this final analysis.

To estimate the annual cost savings to employers for removing the requirement for periodic CXRs from the listed standards, OSHA, with the assistance of Eastern Research Group (ERG), estimated the number of unnecessary CXRs that will be eliminated by this change by drawing on estimates of the affected number of workers for each standard addressed in the agency's recent Information Collection Requests (ERG, 2017b). The numbers presented in this FEA have been revised from the PEA to reflect the most recent wage, price and industry profile data. These changes are demonstrated in the SIPS–IV Cost Benefits Estimates spreadsheet (OSHA, 2018).[12] OSHA then analyzed data from the Centers for Medicare and Medicaid Services' (CMS) Physician Fee Schedule. Summary CMS survey data from across the United States indicated a national average price of $73.11 per CXR (ERG, 2017a).[13] Finally, the agency multiplied the average price of a CXR by the number of CXRs to be eliminated, providing an estimate of $265,326 of exam cost savings. This information is detailed as follows:

Coke Oven Emissions (§ 1910.1029):
  Reduced Exam Costs: 2,498 exams × $73.11 CXR cost per exam = $182,636
Acrylonitrile (§ 1910.1045):
  Reduced Exam Costs: 542 exams × $73.11 CXR cost per exam = $39,627
Inorganic Arsenic (§ 1910.1018):
  Reduced Exam Costs: 589 exams × $73.11 CXR cost per exam = $43,063
Total Reduced Exam Cost:
  $182,636 + $39,627 + $43,063 = $265,326

Reducing the time of the medical exam, by removing the CXR requirement, also saves employers money because the employee is away from work for a shorter period of time. Based on information from *RadiologyInfo.org,* the agency conservatively estimates that the time employees will be away from work is reduced by 15 minutes when the CXR component of the exam is eliminated (ERG, 2017a). As indicated below, OSHA estimates this change will save 907 hours of worker time that would have been spent during their recurring exams.

For the calculation of labor-related cost savings for this FEA, OSHA included an overhead rate when estimating the marginal cost of labor in its primary cost calculation. Overhead costs are indirect expenses that cannot be tied to producing a specific product or service. Common examples include rent, utilities, and office equipment. Unfortunately, there is no general consensus on the cost elements that fit this definition. The lack of a common definition has led to a wide range of overhead estimates. Consequently, the treatment of overhead costs needs to be case-specific. OSHA adopted an overhead rate of 17 percent of base wages. This is consistent with the overhead rate used for sensitivity analyses in the 2017 Improved Tracking of Workplace Injuries and Illnesses FEA and the FEA in support of OSHA's 2016 final standard on Occupational Exposure to Respirable Crystalline Silica. For example, to calculate the total labor cost for production work related medical exams for production operator (SOC: 51–000), three components are added together: Base wage ($18.30) + fringe benefits ($8.49, 46% of $18.30)[14] + applicable overhead

[11] OSHA has conducted a sensitivity analysis on the hypothetical assumption that the clarification will assist some employers' compliance with their hearing-loss reporting obligations. For instance, in 2016 BLS reported 100 cases of hearing loss for the entire construction industry, or 0.2 per 10,000 workers; however, hearing loss across all industries was much higher, at 1.7 per 10,000 workers (BLS, 2017a). If the construction industry were to report hearing loss at a rate of 2.0 per 10,000 workers—similar to other industries—then it would be reporting an additional 900 hearing-loss cases. The average case costs $57, so that would result in total additional costs of $51,300 ($57 × 900). OSHA assumes that, across all industries, the clarification may result in a 10% increase in reported hearing-loss cases (with much of that overall increase coming from the construction industry). This modest 10% increase is based on the assumption that the regulation's hearing-loss reporting requirement is already clear to nearly all employers. A 10% increase would result in additional costs of $107,700 (18,900 total cases in 2016 × 10% × $57 per case) (BLS, 2017a). (The $57-per-case estimate is based on the estimated labor costs divided by the total number of cases reported to BLS (OSHA, 2018a)).

[12] In addition, note that the totals in tables in this chapter, as well as totals summarized in the text, may not precisely sum from underlying elements due to rounding. The precise calculation of the numbers in the FEA appears in the spreadsheet.

[13] Exam cost adjusted from PEA to 2017 dollars using the GDP deflator as indicated in the SIP–IV Cost Benefits Estimates spreadsheet (OSHA, 2018).

[14] Wages are based on data from the May 2017 National Occupational Employment and Wage Estimates for Standard Occupational Classification Code 51–000—Production Operation (BLS, 2017), which lists average base compensation of $18.30. A private industry Fringe Benefit rate of 31.70 percent was from Source: Bureau of Labor Statistics.

costs ($3.11, 17% of $18.30). This increases the labor cost of the fully-loaded wage (including overhead) for a production worker to $29.90.

Multiplying the reduced exam time by the fully-loaded employee hourly wages of $29.90, the agency estimates a cost savings of $27,131. This information is detailed as follows:

Coke Oven Emissions (§ 1910.1029):
Time saved: 2,498 exams × .25 hours = 625 hours [15]
Reduced Cost: 625 hours × ($26.79 employee compensation + $3.11 overhead) = $18,675
Acrylonitrile (§ 1910.1045):
Time saved: 542 exams × .25 hours = 136 hours
Reduced Cost: 136 hours × ($26.79 employee compensation + $3.11 overhead) = $4,052
Inorganic Arsenic (§ 1910.1018):
Time saved: 589 exams × .25 hours = 147 hours
Reduced Cost: 147 hours × ($26.79 employee compensation + $3.11 overhead) = $4,403
Total Employee Time Savings from fewer CXRs:
625 hours + 136 hours + 147 hours = 907 hours
Total Value of Time Savings plus Overhead from fewer CXRs:
$18,675 + $4,052 + $4,403 = $27,131

Combining the value of saved worker time and overhead of $27,131 with the decreased exam cost of $265,326 nets a total potential cost savings to employers of approximately $292,500. OSHA did not receive comments questioning the estimates of the cost savings, as presented in the PEA.[16]

In addition to removing the requirement for periodic CXR, OSHA is updating other CXR requirements in its coke oven emissions, acrylonitrile, and inorganic arsenic standards, as well as in its three Asbestos standards—§§ 1910.1001 asbestos (General Industry), 1915.1001 Asbestos (Maritime), and 1926.1101 Asbestos (Construction)—and two cadmium standards—§§ 1910.1027 Cadmium (General Industry) and 1926.1127 Cadmium (Construction).

In recent years, innovation in medical technology has allowed for screening with digital CXRs. Reflecting this, OSHA is adding the option of digital radiography to its existing standards. As a practical matter, digital radiography systems are rapidly replacing traditional analog film-based systems in medical facilities.

There are cost savings to using digital CXRs over analog CXRs. Traditional analog film-based CXRs are much larger than standard-sized office documents and weigh more than a piece of paper of the same size. As such, storing traditional CXRs requires an investment in specialized storage cabinets, which in turn may require reinforcement of the floor. Digital CXRs, however, can be stored on a computer. Due to continuing advances in technology and the emergence of inexpensive and large-capacity storage devices, digital CXRs can be stored for just a fraction of a cent each. Digital CXRs also save time and materials because they can be instantly processed and ready for use as soon as the CXR is taken.

OSHA believes that digital storage of CXRs is so common that most employers are already realizing these cost savings and will thus not incur any additional savings as a result of this change. As a practical matter, OSHA already allows digital storage of CXRs. In a letter of interpretation released on September 24, 2012, entitled ''OSHA's Position on the Acceptability of Digital Radiography in Place of Traditional Chest Roentgenograms,'' OSHA stated: ''OSHA would allow, but would not require, digital radiography in place of traditional chest roentgenograms for medical surveillance exams under the asbestos standards for general industry, construction, and shipyards.'' [17] Although OSHA has not released interpretations specifically allowing for digital storage of CXRs in other standards, it has become the agency's practice not to cite or otherwise penalize employers for storing CXRs digitally. Because it is now current OSHA enforcement practice to waive the formal requirement for employers to keep analog copies of CXRs when they store them digitally, the agency concludes that there is no realized cost savings by changing this requirement. Even so, OSHA also believes that employers will benefit from the certainty that comes only from codified regulation. Employers can now rely on the regulatory text rather than agency discretion.

Revisions in these standards also include replacements of antiquated terminology such as ''roentgenogram,'' correction of misspellings in the existing standards, an update to the current ILO classification guidance, and revisions where inaccuracies exist in clinical diagnostic language. OSHA is updating the regulatory text to better distinguish between the appropriate uses of ''classification'' and ''interpretation'' of CXRs. As indicated in the PEA, the agency believes these changes are merely editorial in nature and reflect current practices, and therefore do not create new costs or cost savings for employers. As discussed in the Summary and Explanation, while commenters generally approved of the changes OSHA was proposing, the agency did not receive comments questioning the PEA's conclusions.

Cotton Dust

As explained in greater detail in the Summary and Explanation, OSHA is making revisions to its medical surveillance program requirements—more specifically, its pulmonary function testing requirements of the cotton dust standard (29 CFR 1910.1043). Exposure to cotton dust places employees at risk of developing the respiratory disease byssinosis. Since the publication of the cotton dust standard in 1978, OSHA has not updated its pulmonary function testing requirements to match those of current technology and practices. As a result, OSHA in the proposal based the proposed revisions on current recommendations from organizations recognized as authorities on generally accepted practices in pulmonary-function testing: ATS/ERS, NIOSH, and ACOEM.

OSHA is revising paragraph (h) and appendix D of its Cotton Dust standard. Many of the revisions are simply editorial, to clarify existing language, as well as to update pulmonary function measurements. However, for those revisions that may suggest a potential need to upgrade pulmonary testing equipment, OSHA investigated the characteristics of equipment currently available in the United States and whether such equipment met the specifications of OSHA's revisions.

Paragraphs (h)(2)(iii) and (h)(3)(ii)(A) and (B) give instructions for pulmonary function testing, measuring Forced Vital Capacity (FVC) and Forced Expiratory Volume in One second (FEV_1) against the Spirometry Prediction Tables for Normal Males and Females (former appendix C), adjusting those measurements based on ethnicity, and from the outcome of such measurements, determining the frequency of medical surveillance provided to employees. OSHA is

Employer Costs for Employee Compensation (BLS 2018). The multiplier applied to base compensation to determine loaded wages is 1.46 [1/(1 − 31.70 percent)]. Applying the multiplier (1.46) to base compensation ($18.30) results in loaded wages of $26.79.

[15] Numbers rounded to the nearest whole number here and elsewhere for presentation in the Final Economic Analysis. See also fn. 9.

[16] The overhead component was not included in the PEA, but has been added to the FEA in fulfillment of Department of Labor policy.

[17] U.S. Dept. of Labor, OSHA, Standard Interpretations. Asbestos standards, Sept. 24, 2012, *www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=28583* (accessed November 24, 2017).

revising this provision to specify use of the National Health and Nutrition Examination Survey (NHANES) III reference data set and to replace the values currently in appendix C with the NHANES III values.

Software for most spirometers includes the NHANES III data set, which is identified as the Hankinson data set on some spirometers. If software for older spirometers does not include the NHANES III data set, users of those spirometers will be able to access the NHANES III values online through the NIOSH calculator. Tables of the NHANES III values are also available online in an appendix of OSHA's spirometry guidance for healthcare professionals. Therefore, NHANES III values are widely available to spirometry providers, including those providers using older spirometers.

OSHA's use of the NHANES III data set in place of the Knudson values currently in appendix C simplifies interpretation of spirometry results by providing reference values for more race/ethnic groups, thereby reducing the need to adjust values for race/ethnic groups not included in the Knudson data set. This revision as to how pulmonary functioning should be tested and measured falls in line with current generally accepted practices; therefore OSHA does not believe this revision will pose a compliance burden to affected employers.

OSHA is also updating paragraph (h)(2)(iii) to require an evaluation of FEV_1, FVC, and FEV_1/FVC against the lower limit of normal (LLN) for each race/ethnic group, by age. Modern spirometers typically provide this information automatically, and no one in the record argued that this provision would have costs. Similarly, OSHA has decided that the basis for frequency of medical surveillance in paragraphs (h)(3)(ii)(A) and (B) is whether the FEV_1 is above or below the LLN. This technically changes the required triggers for medical surveillance from the existing standard, but is consistent with generally accepted current practices. The agency believes the changes will reduce confusion and have little other practical effect. The revision to evaluate the FEV_1/FVC ratio in addition to FEV_1 and FVC does not affect the triggers for other medical monitoring requirements such as changes in medical-surveillance frequency or referral for a detailed pulmonary examination because the standard bases those triggers solely on FEV_1 values.

Revisions to appendix D address updates to the specifications of spirometry equipment used in performing pulmonary functioning tests. To assess whether current readily available spirometry equipment met the agency's specifications, OSHA investigated the market for spirometry equipment, with the assistance of a contractor, Eastern Research Group (ERG). OSHA found that the market has been adapting to similar consensus standards in this area since as far back as 1994. In its research of spirometry product specifications collected through internet searches, interviews with manufacturers, and the consultation of peer-reviewed literature and voluntary standards published by respiratory health groups, the agency found that spirometry models currently sold in the United States, Europe, and Australia meet the specification revisions of spirometry equipment to be used in the cotton dust standard. Upon further investigation, ERG determined that out of a sample of 12 spirometry models from various manufacturers, 11 models were already compliant with the volume, accuracy, and minimum duration requirements of the 2005 spirometry specification standard jointly published by ATS/ERS (ERG, 2017a).

The agency estimates that spirometry equipment has a working life of approximately ten years. To prevent a potential burden to employers from having to prematurely purchase new equipment, OSHA is allowing the revised spirometry specifications to apply only to equipment newly purchased one year or more after the date of publication of this final standard in the **Federal Register**. Combined with evidence that the large majority of the equipment already on the market is already compliant, OSHA preliminarily concluded that the revisions to the spirometry equipment specifications would not impose additional costs or compliance burdens to employers. OSHA received no comments indicating substantial costs from these requirements, and therefore stands by its preliminary conclusions.

Shipyard Employment: Feral Cats

As stated in the Summary and Explanation, OSHA is removing feral cats from its definition of ''vermin'' in paragraph (b)(33) of § 1915.80—subpart F—Shipyard General Working Conditions. 29 CFR 1915.88—Sanitation, paragraphs (j)(1) and (2), specify that employers must, to the extent reasonably practicable, clean and maintain workplaces in a manner that prevents vermin infestation. When employers detect vermin, they must implement and maintain an effective vermin-control program.

OSHA has determined that, although the possibility exists for feral cats to pose safety and health hazards for employees, the threat is minor as the cats tend to avoid human contact. Further, stakeholders and commenters (as discussed in the Summary and Explanation) have expressed concern that including the term ''feral cats'' in the definition of ''vermin'' encourages cruel and unnecessary extermination. OSHA does not believe that removing the term ''feral cats'' from the definition will reduce worker health and safety, and notes that feral cats may help reduce the presence of other vermin. To the extent feral cats pose a safety or health hazard at any particular shipyard, OSHA would consider the cats to be ''other animals'' under the standard. Removing a perceived obligation to exterminate feral cats does not have any costs to employers; if there is an economic effect, it would be a potential cost savings to the extent that anyone is now exterminating feral cats on the basis of that perceived obligation.

911 Emergency Medical Services

OSHA is revising paragraph (f) in 29 CFR 1926.50—Medical Services and First Aid. Existing § 1926.50(e) requires employers to provide a communication system for contacting ambulance service, or proper equipment for transportation of an injured person. Existing § 1926.50(f) requires the posting of telephone numbers of physicians, hospitals, or ambulances for work sites located in areas where 911 emergency service is not available. OSHA is retaining both of these requirements. The agency will add to paragraph (f) a requirement that when an employer uses a communication system for contacting 911 services, the employer must ensure that the communication system can effectively do so, and, if the system is in an area that does not automatically supply the caller's latitude and longitude to the 911 dispatcher, post or otherwise provide to employees the latitude and longitude of the work site or other information that communicates the location of the worksite.

OSHA has concluded that this requirement will result in annual costs of $32,440 until 2019, when the FCC expects enhanced 911 wireless services to be universal, at which time these costs would disappear.

OSHA calculated the burden hours and wage hour costs for employers to post the latitude and longitude of the work site location based on the number of new construction projects started in a given year. To estimate the number of project sites, OSHA reviewed the most

recent data provided by request from Dodge Data and Analytics.[18] The Dodge data show a total of 891,712 new construction project starts in 2016, of which 766,133 were residential buildings, 68,589 were non-residential buildings, and 56,990 were non-buildings. Of the 766,133 residential buildings, 735,745 were single-family homes, 9,084 were two-family houses, and 21,304 were apartments.[19]

OSHA notes that more than one single-family home may be built at a project site. The agency determined that construction contractors build approximately one-half of single-family houses at single house project sites and the other half at project sites holding multiple single-family homes. As a result, OSHA estimated the number of single-family homes completed at single house project sites in 2016 to be 367,873, and 183,936 to be the total of project sites holding two single family-homes (one-half of single-family houses at single project sites: 735,745/2 = 367,873; one-half of single-family homes at project sites holding two houses: 367,873/2 = 183,936). As shown below in Table IV–1, the total number of construction project sites covered by this provision is: 707,776.

TABLE IV–1—ESTIMATED TOTAL CONSTRUCTION SITES IN THE UNITED STATES, 2016

Type of construction site	Total number of construction projects
Non-Residential Buildings	68,589
Non-Buildings Construction Projects	56,990
Residential Buildings	582,197
One Single-Family Home Per Site	367,873
Multiple Single-Family Homes Per Site	183,936
Multi-Family Residential Buildings	30,388
Two-Family Houses	9,084
Apartments	21,304
Total Construction Sites	707,776

Source: U.S. Dept. of Labor, OSHA, Directorate of Standards and Guidance, Office of Regulatory Analysis–Safety, based on Dodge Data and Analytics, 2016.

In the United States, when a 911 call is made from a traditional telephone or wireline, the call is routed to a Public Safety Answering Point (PSAP) that is responsible for assisting people in a particular geographic area or community. Depending on the type of 911 service available, the telephone number of the caller and the location or address of the emergency is either communicated by the caller to the emergency dispatcher (Basic 911); or automatically displayed to the dispatcher through the use of equipment and database information (Enhanced 911). According to a 2001 report produced by the RCN Commission and the National Emergency Number Association (NENA) entitled, *Report Card to the Nation: The Effectiveness, Accessibility and Future of America's 911 Service,*[20] wireline 911 coverage is available to 97.8 percent of the U.S. population; however only 93 percent of all U.S. counties have either Basic or Enhanced wireline 911 coverage while 7 percent of U.S. counties are without any 911 services. NENA reported that these areas without any wireline 911 coverage are primarily rural in character with sparse population and generally high poverty levels; as well as inclusive of Native American lands and military installations (NENA, 2001).

In the December 5, 2014, version of the Federal Communications Commission's (FCC) 911 Wireless Service Guide, it was estimated that about 70 percent of 911 calls were placed from wireless phones (FCC, 2014). The FCC finds using wireless phones creates unique challenges for emergency response personnel because wireless or mobile phones are not associated with one fixed location or address. Although the location of the cell site closest to the 911 caller may provide a general indication of the caller's location, the FCC finds that the information is not always specific enough for rescue personnel to deliver assistance to the caller quickly (FCC, 2014). As a result, the FCC is now requiring wireless service carriers to implement its wireless Enhanced 911 program which will provide 911 dispatchers with additional information on wireless 911 calls. The FCC is allowing the implementation of its wireless Enhanced 911 program in two parts—Phase I and Phase II. Phase I requires carriers to provide the PSAP with the telephone number of the 911 wireless caller as well as the location of the cell site or base station transmitting the call. Phase II however, requires carriers to provide more precise information to the PSAP, such as the latitude and longitude of the caller whereby the accuracy of the geographical coordinates must be within 50 to 300 meters of the caller's location (FCC, 2014).

With the implementation of the wireless Enhanced 911 program, the total number of U.S. counties with 911 coverage has increased from 93 percent to nearly 97 percent. As of August 2017, NENA reported a total number of 3,135 U.S. counties, which include parishes, independent cities, boroughs, and Census areas. Of these counties, 97.7 percent (3,063) are now capable of receiving some[21] Phase I location information and 97.0 percent (3,041) are capable of receiving some Phase II. All wireless carriers, however, are expected to comply with Phase II of the FCCs requirements by 2019.[22]

Since all 911 emergency calls made are routed to a PSAP or call center based on the geographic location in which the call was made, for the purpose of this analysis, OSHA is interested in those U.S. counties where Enhanced 911 is neither available by wireline nor wireless device. Using the data provided by NENA, OSHA estimates that of the 3,135 recorded U.S. counties, 3 percent (87) have neither wireline nor wireless Enhanced 911 capabilities. By extension, for this analysis, OSHA further assumes that 3 percent of all construction project sites (21,233 of 707,776 construction project sites) are located within those counties without wireline and wireless Enhanced 911

[18] For the purpose of this section, in conformance with previous ICRs on this provision, OSHA deems the Dodge data to be the best source of information for new construction projects. This stands in contrast to U.S. Census construction data used later in the FEA in the context of Load Limit Posting provision because OSHA is interested in *all* construction projects started, but not necessarily completed, in a given year. While the Census construction data provides more detailed information on residential housing starts and completions, and total value of construction put in place, it does not provide information on the total number of construction projects started in a given year. No commenters questioned the use of either data series.

[19] Dodge defines single-family homes as single-family detached, stand-alone units. Single-family attached structures, including such buildings as condominiums and townhomes, are included in Dodge's multi-family category.

[20] Report Card to the Nation (RCN)—An RCN Commission was formed by the National Emergency Number Association (NENA) to review and grade the performance of 911. NENA serves its members and the greater public safety community as the only professional organization solely focused on 911 policy, technology, operations, and education issues.

[21] The term ''some,'' as defined by the National Emergency Number Association, means that some or all wireless carriers have implemented either Phase I or Phase II service in the County or the PSAPs. In order for any carrier to provide service, the County or PSAP must be capable of receiving the service. In most cases, all carriers are implemented in a County or PSAP, but one or more may be in the process of completing the implementation. See *www.nena.org/?page=911Statistics* (NENA, 2017).

[22] See 47 CFR 20.18—911 Service.

capabilities and will therefore be covered by this provision whereby employers must either post the latitude and longitude of the work site or other location-identification information that effectively communicates the location of the work site to the 911 emergency medical service dispatcher. The agency believes this is likely an overestimate of the number of construction sites affected by this provision of the proposal, as construction activity will generally parallel population concentration. Enhanced cell service, in turn, is more concentrated around population centers. NENA estimates that 98.7 percent of the population now has Phase II wireless service; 99.0 percent of PSAPs have Phase II service. The agency, however, did not receive any comments on this aspect of analysis, nor for the distribution of wireline and wireless service at construction sites.

OSHA estimates that it takes the average construction employee affected by this requirement 3 minutes (.05 hour) to obtain the latitude and longitude of worksite locations, write the information on material, and then to prominently post the information, as required by proposed § 1926.50(f). The agency posited in the PEA that this would not pose an issue of technological feasibility as the information could be easily downloaded from the internet before the crew leaves for the site; in the large majority of cases this information should be also be available onsite via common applications for smartphones. This was not questioned in comments, and OSHA therefore retained this as its final assessment. The Bureau of Labor Statistics' (BLS) 2017 Occupational Employment Statistics (OES) data indicate that the most common construction occupation is ''construction laborer.'' Partly for that reason, the agency believes this occupation is most representative of the workers actually posting the latitude and longitude load requirements at construction project sites. Consistent with that, OSHA, based on the OES data, estimates a wage of $18.70 per hour for the average affected construction worker (BLS, 2017). OSHA also estimated, based on BLS 2018 Employer Costs for Employee Compensation data, that construction employers paid an additional 46 percent in employee benefits,[23] implying a total employee compensation of $27.38 per hour in 2017. In addition, this is estimated to save an additional $3.18 per hour in overhead costs.[24] Therefore, the estimated annual burden hours and labor costs of this requirement are:

Burden hours: 21,233 construction project sites × .05 hour = 1,062 hours

Cost: 1,062 hours × ($27.38 employee compensation + $3.18 overhead) = $32,440

Based on these limited costs, OSHA preliminarily determined that the provision would be economically feasible; OSHA received no comments to the contrary and retains this conclusion for the FEA. As noted previously, the task of communicating relevant site information to rescue services is gradually being made easier by the spread of advanced telecommunications technology, such that in the near future the existing burden should be eliminated. OSHA neither received any comments on its preliminary estimate, nor on how long the costs will likely remain in effect. Therefore it retains this estimate, updated to 2017 dollars.

Permissible Exposure Limits Table

As discussed in the Summary and Explanation, 29 CFR 1926.55—Gases, Vapors, Fumes, Dusts, and Mists—is the Construction counterpart to 29 CFR 1910.1000—Air Contaminants, which enumerates hundreds of Permissible Exposure Limits (PELs) in its Z tables. Because 29 CFR 1926.55 is not as clear as its General Industry counterpart, OSHA is updating § 1926.55(a) and appendix A (now Tables 1 and 2) to help clarify the construction PELs. These updates will: (1) Change the term ''Threshold Limit Values'' to ''Permissible Exposure Limits;'' (2) eliminate language that sounds advisory; (3) eliminate confusing language; (4) divide appendix A into Tables 1 and 2; (5) correct several noted errors in appendix A; and (6) correct cross-references to the asbestos standard. OSHA deems these changes to be simple clarifications which will not change the substantive effect of this rule. OSHA did not receive any comments about any potential costs because of these changes and therefore concludes that these revisions will not result in changes to the cost or impact of 29 CFR 1926.55.

Process Safety Management of Highly Hazardous Chemicals

OSHA is replacing the regulatory text of its Process Safety Management (PSM) of Highly Hazardous Chemicals construction regulation, § 1926.64, with a cross-reference to the corresponding general industry regulation in 29 CFR 1910.119. The requirements applicable to construction work in 29 CFR 1926.64 are identical to those set forth in 29 CFR 1910.119. This change will only serve to eliminate duplicative regulatory text and as such will present no additional compliance burden to employers. In the absence of public comment to the contrary, OSHA has determined that this cross-reference to an existing standard has no cost.

Lanyard/Lifeline Break Strength

OSHA is lowering the minimum breaking strength requirement in § 1926.104—Safety Belts, Lifelines and Lanyards, paragraph (c), from 5,400 pounds to 5,000 pounds, which is in better accord with market practice. 5,400-pound breaking strength is not generally offered on the market. This may have cost savings to the extent that some employers purchased lanyards/lifelines with much higher strength. As discussed in the Summary and Explanation of that section, the agency believes a 5,000-pound requirement will still provide a more than sufficient safety factor. Because this change lowers the minimum requirement, employers will not be required to purchase new equipment. When employers do replace their equipment, they could continue to purchase lifelines with a breaking strength of 5,400 pounds, or with a breaking strength of 5,000 pounds. This revision also will bring § 1926.104(c) into conformance with the lanyard and lifeline breaking-strength requirement in the Fall Protection standard, at § 1926.502(d)(9). As a result, OSHA preliminarily concluded that this change will not add any new compliance costs for employers and, receiving no comments to the contrary, believes this is descriptive of the final rule as well. To the extent this eliminates confusion by employers, this may provide some cost savings.

Manual on Uniform Traffic Control Devices

Under 29 CFR part 1926, subpart G—Signs, Signals, and Barricades, OSHA requires that employers comply with the mandatory provisions of Part 6 of the Manual on Uniform Traffic Control Devices (MUTCD). Currently, employers comply with Part 6 when they use one of two versions of MUCTD: The 1988

[23] BLS, 2017. Employer costs for employee benefits (other than wage and salary) were estimated to be 31.70 percent of total compensation for workers employed in construction. The fringe benefit factor is calculated by 1/(1 − percent of total compensation attributable to employee benefits, or 1/(1 − .317) = 1.4641. Total employer cost for employee compensation is calculated by multiplying the base wages ($18.70) by the fringe benefits factor (1.4641).

[24] As indicated previously, overhead is estimated to equal 17% of base wages, or $3.18 per hour.

Edition, Revision 3, September 3, 1993 MUTCD (''1988 Edition'') or the Millennium Edition, December 2000 MUTCD (''Millennium Edition''). Since OSHA's last published update to subpart G, requiring employers to follow one of the two MUTCD editions above, the Department of Transportation (DOT) has updated 23 CFR 655.601 through 655.603 to require adherence to the 2009 Edition, November 4, 2009, MUTCD (''2009 Edition''). The agency is updating subpart G to require employers to follow the MUTCD 2009 Edition.

23 CFR 655.603 states that the MUTCD is the national standard for all traffic control devices installed on any street, highway, or bicycle trail open to public travel. It also requires all States, within two years after a new national MUTCD edition is issued or any national MUTCD amendments are made, to adopt the new MUTCD in the State, adopt the national MUTCD with a State Supplement that is in substantial conformance with the new MUTCD, or adopt a State MUTCD that is in substantial conformance with the new MUTCD.

Each State enacts its own laws regarding compliance with standards for traffic control devices in that State. If the State law has adopted a State Supplement or a State MUTCD that the Federal Highway Administration (FHWA) has found to be in substantial conformance with the national MUTCD, then those State requirements are what the local road agencies (as well as the State DOT) must abide by. The exception is traffic control devices installed on a federally aided project, in which case 23 CFR 655.603(d)(2) specifically requires those devices to comply with the national MUTCD before the road can be opened or reopened to the public for unrestricted use.

The agency believes any employer costs related to incorporating the updated MUCTD reference into subpart G are very limited because, first, the updated DOT rules are already currently in force for all public roads. Second, even in the limited circumstances of construction on private roads, the MUCTD rules are already likely followed. Finally, the changes from the prior editions are minor and could easily be outweighed by eliminating the burden created by having conflicting DOT and OSHA requirements.

Private roads open to public travel are now subject to the same traffic control standards as public streets and highways. However, the FHWA does not require State and/or local highway agencies to have specific authority or enforcement responsibility for traffic control devices on private roads to ensure compliance with the MUTCD. Owners or parties responsible for such private roads are encouraged to bring the traffic control devices into compliance with the MUTCD and other applicable State Manuals, and those who do not may find themselves exposed to increased tort liability. State and local jurisdictions can encourage MUTCD compliance on private roads by incorporating pertinent language into zoning requirements, building and occupancy permits, and similar controls that they exercise over private properties.

As a practical matter, available data on private road construction indicate that it represents a very small portion of total road construction activity. Data from the Census Construction Spending Survey indicate that it represents less than 1 percent of all funds dedicated to highway and street construction (Census, 2014).[25] This leaves a very limited scope of construction signage not already governed by the updated DOT rules.

Since all contractors engaged in construction of public roads are now required to follow the current MUTCD, only those firms that work exclusively on private roads would incur costs associated with this proposal. Contractors that work on both public and private roads should not see an increased burden because they would already need to be in compliance with the MUTCD to work on public roads. Considering that there is pressure, both from a regulatory and liability perspective, for firms that work exclusively on private roads to follow the MUTCD, OSHA believes the total number of these firms potentially incurring costs as a result of this proposal would be very small. OSHA received no comments on the number of contractors that work exclusively on private roads and are therefore not required to follow the MUTCD.

For any firms not already complying with the updated MUTCD, the cost of compliance would be very limited. As explained in the Summary and Explanation, the revisions to the MUTCD make the document more user friendly and account for advances in technology. A comparison of the 1998 and 2009 updates shows fewer and less burdensome new requirements, but more guidance and support material which makes the document easier to use. This change to the OSHA rule should decrease the burden on employers by eliminating confusion as to which edition they must comply with. It would also inform employers that compliance with DOT regulations will not run afoul of outdated OSHA regulations. Most of the new provisions provide more options to employers, which should either increase safety or reduce the burden to employers.

Nonetheless, the agency has identified one[26] proposed change in the 2009 Edition that could have a very small cost for those employers doing construction work exclusively on private roads that are not already following the updated MUTCD for these items. The change prohibits contractors from relying on hand-signs alone to control traffic. This burden would only apply to a subset of contractors that use flaggers to control traffic (as opposed to something like automated flagger-assistance devices) and choose to only use hand signals to accomplish this task. Each of these contractors would need to purchase at least one stop sign or flag. OSHA has determined that a flag would cost, on average, $8.23 each, dependent on size (ERG, 2015).[27]

The number of signs or flags a contractor needs for these situations would presumably be dependent on the number of simultaneous projects that the road construction firm engages in during a typical season, or how large and complex such projects are. While smaller contractors may be more likely to engage solely in private road operations, larger, more complex projects demanding more equipment would almost certainly fall to larger contractors also employed in public road construction. Considering the very limited number of contractors and situations that would likely be impacted by this proposal, the agency believes that most of the potentially affected firms would not need more than a handful of either signs or flags.

As indicated in the PEA, it is not clear whether any firm would incur new costs as a result of this update to the 2009 Edition, but as shown, any such costs would be very limited in nature and

[25] Since private spending on Highway and Street construction is relatively small in comparison to other categories of spending, it does not appear as a separate item, but can be derived from subtracting Total Public Construction spending on Highway and Street construction from Total Construction spending on Highway and Street construction. 2013 data indicates private spending was well below 1 percent of total spending in this category. This pattern was consistent at least as far back as 2002.

[26] In the proposed rule OSHA mistakenly identified a second change in the 2009 Edition as a new requirement. The Agency stated that ''[o]ne change is a requirement to use a new symbol and additional sign for a shoulder drop-off'' (81 FR 68504, 68534). Neither the use of a shoulder drop-off sign nor an additional sign is required by the 2009 Edition under Section 6F.44.

[27] Inflated to 2017 dollars using GDP deflator (OSHA 2018).

would be an insignificant portion of a contractor's annual profit. OSHA therefore did not believe this change would have a significant impact to any firm or raise an issue of economic feasibility. The agency did not receive any comments to contradict this preliminary conclusion, and therefore believes it accurately describes the final rule.

Load Limit Posting

OSHA is removing the load limit posting requirement for single-family dwellings and wood-framed multi-family structures in 29 CFR 1926.250—General Requirements for Storage, paragraph (a)(2). OSHA estimates that removing the requirement for employers to post maximum safe load limits of floors in storage areas when constructing single-family dwellings or wood-framed multi-family structures will result in a cost savings to employers engaged in these construction activities of approximately $5,806,000.

OSHA estimates that it takes the average construction employee affected by this requirement 15 minutes (0.25 hours) to develop and post the currently required signs, assuming the information is readily available from current engineering estimates. The Bureau of Labor Statistics' (BLS) 2017 Occupational Employment Statistics (OES) data (BLS, 2017) indicate that the most common construction occupation is ''construction laborer.'' Partly for that reason, the agency believes this occupation is most representative of the workers actually posting the load limit requirement at such dwellings. Consistent with that, OSHA, based on the OES data, estimates a wage of $18.70 per hour for the average affected construction worker (BLS, 2017). OSHA also estimates that, based on BLS 2018 Employer Costs for Employee Compensation data, employers pay an additional 46 percent in employee benefits,[28] implying a total employee compensation of $27.38 per hour in 2017. This is estimated to save an additional $3.18 in hourly overhead costs.[29] The resulting labor and overhead savings is $30.56 per hour. According to the U.S. Census, in 2016 there were 738,000 single-family houses and 11,000 wood-framed multi-family residential structures constructed (Census, 2016; pp. 213, 477).[30] As was presented in the PEA, OSHA in this FEA estimates that, on average, each single-family house would have one relevant storage area per structure, producing one required posting. For the final rule, the definition of structures covered by the exemption has been expanded somewhat to include wood frame multi-family residential structures. Because such structures are more likely to have multiple storage areas, the agency estimates that on average they would need to have two required postings currently.[31] Using this data, OSHA estimates that the yearly burden on employers affected by this proposed revision will be reduced by $7.64 per posting ($30.56/hour × 0.25 hours) for a total cost savings of $5,806,000 ($7.64 cost per posting × 738,000 single-family homes plus $7.64 × two postings × 11,000 multi-family structures) to the industry.

No public comments challenged OSHA's preliminary cost methodology. Therefore, based on the profile data described above, the final estimated burden hours and labor costs reduced by this requirement are:

Reduced burden hours: 760,000 total postings × .25 hours = 190,000 hours
Reduced cost: 190,000 hours × ($27.38 employee compensation + $3.18 overhead) = $5,806,000

Rollover Protective Structures (ROPS)

OSHA is amending the existing standards in 29 CFR part 1926, subpart W—Rollover Protective Structures; Overhead Protection (§§ 1926.1001, 1926.1002, and 1926.1003). The existing standards, which are based on consensus standards from 1970, are amended to remove the provisions that specify test procedures and performance requirements. The revised provisions will reference the 1970 consensus standards for equipment manufactured prior to the effective date of this final rule. They also reference the most recent ISO standards: ISO 3471:2008, ISO 5700:2013 and ISO 27850:2013, for new equipment manufactured after the effective date of this final rule. It is OSHA's understanding that all industries affected by this change are already following the new ISO standards, and therefore has concluded that this change will not create any new costs for employers. OSHA received no comments that would rebut the agency's conclusion on current adherence to the ISO standards (and therefore the conclusion of no new costs) among the affected industries.

The agency is also expanding the existing regulatory language of §§ 1926.1000 and 1926.1001 to cover compactors and skid-steer loaders, as indicated previously by reserving existing § 1926.1000(a)(2). OSHA believes that this new equipment, as with the equipment currently covered by the existing standard, already adheres to the minimum performance criteria for ROPS as set forth in the recent ISO standards, and received no comment on it. OSHA concludes that this change will not add any new compliance cost to employers. OSHA received no comments on this issue.

Underground Construction—Diesel Engines

Existing regulatory language in § 1926.800(k)(10)(ii) requires that mobile diesel-powered equipment used underground comply with the Mine Safety Health Administration's (MSHA) provisions of 30 CFR part 32. In 1996, MSHA revoked part 32 and replaced it with updated provisions in 30 CFR part 7, subpart E, and 30 CFR 75.1909 Non-permissible diesel-powered equipment; design and performance requirements; 75.1910 Non-permissible diesel-powered equipment; electrical system design and performance requirements; and 75.1911 Fire suppression systems for diesel-powered equipment and fuel transportation units (61 FR 55411). In 2001, MSHA issued 30 CFR 57.5067 to allow engines that meet Environmental Protection Agency (EPA) requirements to be used as an alternative to seeking MSHA approval under part 7, subpart E (66 FR 5706). The agency proposes to update the regulatory language in § 1926.800(k)(10)(ii) to cross-reference these updated provisions.

These changes will allow employers who use diesel-powered engines on

[28] BLS, 2018. Employer costs for employee benefits (other than wage and salary) were estimated to be 31.70 percent of total compensation for workers employed in construction. The fringe benefit factor is calculated by 1/(1 − percent of total compensation attributable to employee benefits), or 1/(1 − .317) = 1.4641. Total employer cost for employee compensation is calculated by multiplying the base wages ($18.70) by the fringe benefits factor (1.4641).

[29] As indicated previously, overhead is estimated to equal 17% of base wages, or $3.18 per hour.

[30] In the 911 Emergency Medical Services section of the FEA presented earlier, the Agency examined total construction starts, which were estimated using Dodge data. Included within that total were new home starts. However, as has historically been the case when examining the paperwork burden for 29 CFR 1926.250, the Agency is using U.S. Census data rather than the Dodge report. As referenced in the PEA, the Dodge report did not include a necessary distinction in the data on townhomes separate from condominiums; townhomes and condominiums were both grouped together in the Dodge report's multifamily category. Therefore, OSHA believes the data provided from the U.S. Census was the best available for analyzing the proposed update to 29 CFR 1926.250(a)(2). While this element in the data was not essential for the FEA, due to a change of scope in the load limit exemption, the Agency is retaining its consistency with the data series used in the PEA. No commenters questioned the use of either data series.

[31] Since many multi-family structures have three or more levels and may span a considerable horizontal distance, this may represent a conservative estimate of the potential cost savings from reduced posting requirements per structure.

mobile equipment in underground construction to (1) use current MSHA procedures to obtain approval plates to affix to the engines, or (2) meet or exceed the applicable EPA requirements listed at MSHA Table 57.5067–1. Based on available information, OSHA has determined that currently manufactured equipment meets the requirements and is generally compliant with the more stringent EPA Tier 3 and Tier 4 emission requirements (ERG, 2015). The agency therefore preliminarily concluded that all applicable new equipment currently available in the market meets the proposed requirements.

OSHA recognizes that there may be some employers using equipment that predates the newer MSHA standards, and the EPA requirements referenced in them. To avoid the costs of replacing existing equipment in use, the agency is allowing equipment purchased before the effective date of the final rule to continue to comply with the terms of existing § 1926.800(k)(10)(ii) (including having been approved by MSHA under 30 CFR part 32 (1995) or be determined to be equivalent to such MSHA-approved equipment). OSHA received no comment on the number of engines in use that meet the existing standard but will not meet the requirements of the new MSHA standard and whether continued use of such equipment presents a serious safety or health hazard. However, as discussed in the Summary and Explanation, commenters agreed the change was desirable. As further indicated in the discussion, the final rule has been refined to better reflect the technical needs of underground construction environments, at the suggestion of commenters. This change does not modify OSHA's preliminary conclusion that this provision, eliminating reference to obsolete MSHA standards, will not produce significant costs of compliance.

In summary, because diesel equipment manufactured for underground construction apparently conforms with the newer MSHA standards, and because this rule does ''grandfather'' existing equipment, the agency believes employers will not have additional expenses in complying with the proposed change to the underground construction standard. OSHA received no comments on this conclusion and therefore the agency carries forward its preliminary assessment to this FEA.

Coke Oven Emissions

Section 1926.1129 regulates exposure to coke oven emissions in construction. In the Summary and Explanation, the point was made that the provisions of this standard do not fit construction work. Therefore OSHA is deleting 29 CFR 1926.1129 (and the reference to it in 29 CFR 1926.55).

An interpretation letter to Mr. Mark D. Katz of the law firm Ulmer & Berne LLP from Assistant Secretary Charles Jeffress on June 22, 1999, stated that OSHA was removing 29 CFR 1926.1129 from OSHA's internet website and intended to delete it from Part 1926 Code of Federal Regulations. It also stated that OSHA would formally notify its field offices that § 1926.1129 would not to be enforced.[32] Since OSHA is not enforcing § 1926.1129 and it has no applicability to construction, this change has no cost.

Removal of Social Security Number Collection Requirements From OSHA's Standards

As discussed in the Summary and Explanation, OSHA is deleting the requirements in its standards for employers to use social security numbers to identify employees in exposure monitoring, medical surveillance, and other records. The agency believes that while this change will help employers to protect their employees from identity theft, it does not impose new costs upon employers. One anonymous commenter was concerned that removing social security numbers from all existing document would be expensive (OSHA–2012–0007–0647). However, the proposed and final changes do not require employers to delete social security numbers from existing records, nor do they prohibit employers from continuing to use them to identify employees; employers are simply no longer required to include employee social security numbers on the records. The agency believes that these changes have benefits to both employees and employers and cost savings, but OSHA has not quantified those benefits and savings for this analysis.

Summary of Costs

Table IV–2 provides a brief summary of the cost savings and benefits that OSHA estimates will result from this rule. The expected total cost savings per year are approximately $6,066,000. Given that these are all annual cost savings, the final estimate is the same when discounted at either 3 or 7 percent. For the same reason, when the Department uses a perpetual time horizon to allow for cost comparisons under E.O. 13771, the annualized cost savings of the final rule are also $6,066,000 with 7 percent discounting. As indicated earlier, this final estimate includes an overhead factor in the labor costs. This is estimated to add an additional savings of $603,500, or 11.3%, on what would have been an estimated savings of $5,462,000.

TABLE IV–2

Item	Cost savings/benefits
Cost Savings:	
Removes the load limit posting requirement for single family dwellings and wood-framed multi-family structures in § 1926.250(a)(2).	$5,806,000.
Removes the requirement for periodic CXR in §§ 1910.1029, 1910.1045, and 1910.1018 ...	$292,500.
Revises paragraph (f) in 29 CFR 1926.50—Medical Services and First Aid	−$32,440.
Total	$6,066,000.
Other Benefits:	
Adds cross-reference between §§ 1904.5 and 1904.10(b)(6)	Clarifies existing employer obligations regarding recording of hearing loss.
Allows digital storage of chest roentgenograms in §§ 1910.1029, 1910.1045, 1910.1018, 1910.1001, 1915.1001, 1926.1101, 1910.1027, and 1926.1127.	Brings standard up to date, simplifies.
Updates required pulmonary function testing requirements in § 1910.1043	Brings OSHA standards up to current technology and medical practices.

[32] U.S. Dept. of Labor, OSHA, Standard Interpretation, Coke Oven Emissions, *www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=INTERPRETATIONS&p_id=22754* (accessed November 24, 2017).

TABLE IV–2—Continued

Item	Cost savings/benefits
Eliminates ''feral cats'' from definition of vermin in § 1926.250(b)(3)	Eliminates the threat of unnecessary extermination.
Clarifies language in Construction PELS, 29 CFR 1926.55	Clarifies existing construction employer obligations regarding PELs.
PSM cross-reference between §§ 1926.64 and 1910.119	Eliminates unneeded regulatory text.
Lowering lanyard/lifeline break strength, § 1926.104(c)	Harmonizes with fall protection rule § 1926.502.
Updates 29 CFR part 1926, subpart G, to latest DOT MUTCD standards	Harmonizes nationwide rules, greater safety, incidental costs.
Updates Rollover Protective Structure rule (ROPS), 29 CFR part 1926, subpart W	Harmonizes OSHA rule with more recent consensus standards.
Update references in Underground Construction—Diesel Engines, § 1926.800(k)(10)(ii)	Simplifies/clarifies employer obligations.
Eliminates Coke Oven Emissions in Construction, § 1926.1129	Eliminates unneeded regulatory text.
Removal of Social Security Number requirements	Provides greater privacy protection for employees.

Source: U.S. Dept. of Labor, OSHA, Directorate of Standards and Guidance, Office of Regulatory Analysis—Safety, 2018.

Technological Feasibility

The purpose of the provisions in this standard is to reduce the burden on employers, or provide employers with compliance flexibility by removing or revising confusing, outdated, duplicative, or inconsistent requirements, while maintaining or enhancing the level of protection for employees. This standard deletes and revises a number of provisions in existing OSHA standards. In most instances, the agency chose to revise outdated provisions to improve clarity, as well as consistency, with standards more recently promulgated by the agency or current consensus standards. In other instances, the provisions revise standards to improve consistency with current technology or research, and to clarify OSHA's original intent. In all cases where a standard has been updated to provide new equipment requirements, there are products currently on the market that will satisfy the standard. The only requirement with significant costs requires posting the latitude and longitude in a prominent place. This is easily technologically feasible. Because of the reduction or removal of current requirements and because many of the updates reflect what is already practiced in the applicable industry, OSHA preliminarily concluded that the proposed rule would be technologically feasible. The agency received no comments to suggest otherwise, and retains that conclusion for the FEA.

Economic Feasibility

OSHA concludes that the final provisions of this standards improvement action do not impose costs of any significance on employers, providing primarily cost savings, and therefore the agency concludes that this rule is economically feasible. The PEA had also preliminarily reached this conclusion with regard to the proposal. The only provision with significant costs requires approximately three minutes of time per establishment. Such a cost is obviously feasible. It is possible that a minimal number of construction projects will incur costs as a result the changes to MUTCD. However the costs per project will be minimal.

Regulatory Flexibility Screening Analysis and Certification

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (as amended), OSHA examined the regulatory requirements of this rule to determine whether these requirements would have a significant economic impact on a substantial number of small entities. This rule has estimated annual costs of $32,440 and will lead to approximately $6.1 million per year in cost savings to regulated entities. Since the costs related to this rule (from posting location information in limited circumstances) and cost savings (primarily from no longer having to post load limit information in many situations) amount to a few dollars per construction project, and are widely dispersed geographically and throughout the industry, the agency believes this rule does not possess the potential to have a significant impact on a substantial number of small entities. The agency therefore certifies that this rule will not have a significant economic impact on a substantial number of small entities.

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V. Legal Considerations

The purpose of the Occupational Safety and Health Act of 1970 (OSH Act; 29 U.S.C. 651 et al.) is ''to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources.'' (29 U.S.C. 651(b)). To achieve this goal, Congress authorized the Secretary of Labor to promulgate and enforce occupational safety and health standards; authorized summary adoption of existing national consensus and established Federal standards within two years of the effective date of the OSH Act (29 U.S.C. 655(a)); authorized promulgation of standards pursuant to notice and comment (29 U.S.C. 655(b)); and required employers to comply with OSHA standards (29 U.S.C. 654(b)).

An occupational safety or health standard is a standard ''which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.'' (29 U.S.C. 652(8)). A standard is reasonably necessary or appropriate within the meaning of section 652(8) if it substantially reduces or eliminates significant risk. In addition, it must be technologically and economically feasible, cost effective, and consistent with prior agency action, or a justified departure. A standard must be supported by substantial evidence, and be better able to effectuate the OSH Act's purposes than any national consensus standard it supersedes. (See 58 FR 16612–16616, March 30, 1993.)

A standard is technologically feasible if the protective measures it requires already exist, can be brought into existence with available technology, or can be created with technology that can reasonably be expected to be developed. (See *American Textile Mfrs. Institute* v. *OSHA,* 452 U.S. 490, 513 (1981) (*ATMI*); *American Iron and Steel Institute* v. *OSHA,* 939 F.2d 975, 980 (D.C. Cir. 1991) (*AISI*).)

A standard is economically feasible if industry can absorb or pass on the costs of compliance without threatening its long-term profitability or competitive structure. See *ATMI,* 452 U.S. at 530 n. 55; *AISI,* 939 F.2d at 980. A standard is cost effective if the protective measures it requires are the least costly of the available alternatives that achieve the same level of protection. *ATMI,* 452 U.S. at 514 n. 32; *International Union, UAW* v. *OSHA,* 37 F.3d 665, 668 (D.C. Cir. 1994) (*LOTO II*). Section 6(b)(7) of the OSH Act authorizes OSHA to include among a standard's requirements labeling, monitoring, medical testing, and other information-gathering and transmittal provisions. (29 U.S.C. 655(b)(7)). OSHA safety standards also must be highly protective. (See 58 FR at 16614–16615; *LOTO II,* 37 F.3d at 668–669.) Finally, whenever practical, standards shall ''be expressed in terms of objective criteria and of the performance desired.'' (29 U.S.C. 655(b)(5)).

VI. OMB Review Under the Paperwork Reduction Act of 1995

A. Overview

The purposes of the Paperwork Reduction Act 1995 (PRA), 44 U.S.C. 3501 *et seq.,* include enhancing the quality and utility of information the Federal government requires and minimizing the paperwork and reporting burden on affected entities. The PRA requires certain actions before an agency can adopt or revise a collection of information (paperwork), including publishing a summary of the collection of information and a brief description of the need for and proposed use of the information. PRA defines ''collection of information'' as ''the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format'' (44 U.S.C. 3502(3)(A)). Under PRA, a Federal agency may not conduct or sponsor a collection of information unless it is approved by OMB under the PRA, and it displays a currently valid OMB control number. The public is not required to respond to a collection of information unless it displays a currently valid OMB control number (44 U.S.C. 3507). Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number (44 U.S.C. 3512).

SIP–IV modifies twenty-five Information Collections currently approved by the Office of Management and Budget (OMB) under the PRA.

B. Solicitation of Comments

The Department is submitting a series of Information Collection Requests (ICRs) to revise the collections in accordance to this Final Rule, as required by the PRA. See 44 U.S.C. 3507(d). Some of these revisions will result in changes to the existing burden hour and/or cost estimates. Other revisions will be less significant and will not change the ICR burden hour and cost estimates.[33]

The agency solicited comments on the information collection requirements contained in the NPRM and did not receive any comments in response to the information collection requirements.

C. Revisions to the Collection of Information Requirements

As required by 5 CFR 1320.5(a)(1)(iv) and 1320.8(d)(2), the following paragraphs provide information about the ICRs, including the changes in burden associated with the revisions to information collection requirements.

1. *Title:* Standards Improvement Project—Phase IV (SIP–IV).

2. *Description of revisions to the ICRs:* The SIP–IV Final Rule adds, removes, or revises collection of information requirements, as further explained in Table 1(a) that identifies those ICRs where the Final Rule changed burden hours and costs. For those ICRs, Table 1(b) itemizes the responses, frequencies,

[33] The Final Rule contains some revisions to existing standard provisions that are not collections of information. These revisions are not addressed in this preamble section. However other revisions will modify language contained in a currently OMB approved information collection (paperwork analysis), though they will not change burden hour or cost estimates. These information collections, referenced by OMB Control number, are included in this section since the Agency will prepare and submit an ICR to OMB to incorporate the revised language into the existing information collection.

time, burden hours, and cost as a result of the program change. Table 2 identifies those ICRs where the Final Rule will add to or revise the text of standards, but do not result in a burden or cost change as result.

TABLE 1(a)—ICRS WITH BURDEN HOUR CHANGES AS A RESULT OF THE RULE

ICR title	OMB control No.	Provisions being modified
Coke Oven Emissions (29 CFR 1910.1029).	1218–0128	OSHA is removing the requirement for periodic chest x-rays as part of the medical exams for employees. In addition, OSHA is adding the option of digital radiography to its existing standards because digital radiography systems are rapidly replacing traditional analog film-based systems in medical facilities.
Acrylonitrile (29 CFR 1910.1045).	1218–0126	OSHA is removing the requirement for periodic chest x-rays as part of the medical exams for employees. OSHA is adding the option of digital radiography to its existing standards because digital radiography systems are rapidly replacing traditional analog film-based systems in medical facilities.
Inorganic Arsenic (29 CFR 1910.1018).	1218–0104	OSHA is removing the requirement for periodic chest x-rays as part of the medical exams for employees. OSHA is adding the option of digital radiography to its existing standards because digital radiography systems are rapidly replacing traditional analog film-based systems in medical facilities.
Construction Standards on Posting Emergency Telephone Numbers and Floor Load Limits (29 CFR 1926.50 and 29 CFR 1926.250).	1218–0093	OSHA is adding to 29 CFR 1926.50(f) a requirement that when an employer uses a communication system for contacting 911 services, if the communication system is in an area that does not automatically supply the caller's latitude and longitude to the 911 dispatcher, the employer must post or otherwise provide to employees the latitude and longitude of the work site or other information that communicates the location of the worksite. In addition, OSHA is removing the load limit posting requirement for single family dwellings and wood-framed multi-family structures in 29 CFR 1926.250.

TABLE 1(b)—ESTIMATED BURDEN HOURS AND COSTS

ICR title and paragraph modified	OMB control No.	Number of respondents	Number of responses	Frequency per response	Average time per response (hours)	Estimated burden hour/ program change	Estimated cost (capital-operation and maintenance) change [34]
Coke Oven Emissions (29 CFR 1910.1029) (§ 1910.1029(j)).	1218–0128	2,498	2,498	Annual	1.42	−624	−$179,357
Acrylonitrile (29 CFR 1910.1045) (§ 1910.1045(n)).	1218–0126	542	542	Annual	1.25	−135	−38,916
Inorganic Arsenic (29 CFR 1910.1018) (§ 1910.1018(n)).	1218–0104	589	589	Annual	1.42	−148	−42,290
Construction Standard on Posting Emergency Telephone Numbers (29 CFR 1926.50) [35] (§ 1926.50(f)).	1218–0093	21,233	21,233	Annual	.05	+1,062	[36] +27,761
Construction Standard on Floor Load Limits (29 CFR 1926.250) (§ 1926.250(a)).	1218–0093	760,000	760,000	Annual	0.25	−190,000	[37] −4,966,600
Grand Total		784,862	784,862			−189,845	−5,199,402

TABLE 2—ICRS WITH NO BURDEN HOUR CHANGES

ICR title	OMB control No.	Provisions being modified
Asbestos in General Industry (29 CFR 1910.1001).	1218–0133	OSHA is adding the option of digital radiography to its existing standards because digital radiography systems are rapidly replacing traditional analog film-based systems in medical facilities.
Asbestos in Construction (29 CFR 1926.1101).	1218–0134	OSHA is adding the option of digital radiography to its existing standards because digital radiography systems are rapidly replacing traditional analog film-based systems in medical facilities.
Asbestos in Shipyards (29 CFR 1915.1001).	1218–0195	OSHA is adding the option of digital radiography to its existing standards because digital radiography systems are rapidly replacing traditional analog film-based systems in medical facilities.
Cadmium in Construction (29 CFR 1926.1127).	1218–0186	OSHA is adding the option of digital radiography to its existing standards because digital radiography systems are rapidly replacing traditional analog film-based systems in medical facilities.

[34] Totals in this column may vary slightly from those in the Final Economic Analysis (FEA) due to rounding in the FEA.

[35] Both 29 CFR 1926.50 and 1926.250 are covered by the same ICR, 1218–0093.

[36] This cost is under item 12 for posting emergency telephone numbers of the ICR, 1218–0093.

[37] This cost is under item 12 for posting floor load limits of the ICR, 1218–0093.

TABLE 2—ICRs WITH NO BURDEN HOUR CHANGES—Continued

ICR title	OMB control No.	Provisions being modified
Cadmium in General Industry (29 CFR 1910.1027).	1218–0185	OSHA is adding the option of digital radiography to its existing standards because digital radiography systems are rapidly replacing traditional analog film-based systems in medical facilities.
Cotton Dust (29 CFR 1910.1043).	1218–0061	OSHA is revising paragraph (h) and appendix D of its Cotton Dust standard. Many of the revisions are simply editorial, to clarify existing language, as well as to update outdated pulmonary function measurements. OSHA is also updating paragraph (h)(2)(iii) to require a determination of the FEV_1/FVC ratio, and the evaluation of FEV_1, FVC, and FEV_1/FVC against the lower limit of normal (LLN) for each race/ethnic group, by age, which is consistent with generally accepted practices.

This final rule will also have an impact on the provisions in OSHA's standards that currently require employers to include employee Social Security Numbers (SSNs) on exposure monitoring, medical surveillance, and other records. As explained above in the Summary and Explanation of the Rule section (see Section III.B.17.), the agency previously considered stakeholder comments regarding the SSN collection requirements in OSHA's standards during the SIP II (70 FR 1112, January 5, 2005) and Respirable Crystalline Silica (81 FR 16285, March 25, 2016) rulemakings. Eliminating SSN collection requirements from OSHA's standards will affect several of the ICRs covered under the PRA. Table 3 shows the control number, title, and section modified for each of the ICRs that will be affected. The agency believes removing the SSNs will have no measureable impact on employer burden.

TABLE 3—ICRs AFFECTED BY SOCIAL SECURITY NUMBER REMOVAL

OMB control No.	Title	Section modified
1218–0202	Hazardous Waste Operations and Emergency Response for General Industry (29 CFR 1910.120) and Construction (29 CFR 1926.65).	1910.120(f)(8)(ii)(A), 1926.65(f)(8)(ii)(A).
1218–0133	Asbestos in General Industry (29 CFR 1910.1001)	1910.1001(m)(1)(ii)(F), 1910.1001(m)(3)(ii)(A), 1910.1001, appendix D.
1218–0010	Vinyl Chloride Standard (29 CFR 1910.1017)	1910.1017(m)(1).
1218–0104	Inorganic Arsenic (29 CFR 1910.1018)	1910.1018(q)(1)(ii)(D), 1910.1018(q)(2)(ii)(A).
1218–0092	Lead Standard in General Industry (29 CFR 1910.1025)	1910.1025(d)(5), 1910.1025(n)(1)(ii)(D), 1910.1025(n)(2)(ii)(A), 1910.1025(n)(3)(ii)(A), 1910.1025, appendix B.
1218–0252	Hexavalent Chromium Standards for General Industry (29 CFR 1910.1026), Shipyard Employment (29 CFR 1915.1026), and Construction (29 CFR 1926.1126).	1910.1026(m)(1)(ii)(F), 1910.1026(m)(4)(ii)(A), 1915.1026(k)(1)(ii)(F), 1915.1026(k)(4)(ii)(A), 1926.1126(k)(1)(ii)(F), 1926.1126(k)(4)(ii)(A).
1218–0185	Cadmium in General Industry Standard (29 CFR 1910.1027).	1910.1027(n)(1)(ii)(B), 1910.1027(n)(3)(ii)(A), 1910.1027, appendix D.
1218–0129	Benzene (29 CFR 1910.1028)	1910.1028(k)(1)(ii)(D), 1910.1028(k)(2)(ii)(A).
1218–0128	Coke Oven Emissions (29 CFR 1910.1029)	1910.1029(m)(1)(i)(*a*), 1910.1029(m)(2)(i)(*a*).
1218–0180	Bloodborne Pathogens Standard (29 CFR 1910.1030)	1910.1030(h)(1)(ii)(A).
1218–0061	Cotton Dust (29 CFR 1910.1043)	1910.1043(k)(1)(ii)(C), 1910.1043(k)(2)(ii)(A), 1910.1043, appendices B–I, B–II, B–III.
1218–0101	1,2-Dibromo-3-Chloropropane (DBCP) Standard (29 CFR 1910.1044).	1910.1044(p)(1)(ii)(*d*), 1910.1044(p)(2)(ii)(*a*).
1218–0126	Acrylonitrile Standard (29 CFR 1910.1045)	1910.1045(q)(2)(ii)(D).
1218–0108	Ethylene Oxide (EtO) Standard (29 CFR 1910.1047)	1910.1047(k)(2)(ii)(F), 1910.1047(k)(3)(ii)(A).
1218–0145	Formaldehyde Standard (29 CFR 1910.1048)	1910.1048(o)(1)(vi), 1910.1048(o)(3)(i), 1910.1048(o)(4)(ii)(D), 1910.1048, appendix D.
1218–0184	4,4′-Methylenedianiline (MDA) for General Industry (29 CFR 1910.1050).	1910.1050(n)(3)(ii)(D), 1910.1050(n)(4)(ii)(A), 1910.1050(n)(5)(ii)(A).
1218–0170	1,3-Butadiene Standard (29 CFR 1910.1051)	1910.1051(m)(2)(ii)(F), 1910.1051(m)(4)(ii)(A), 1910.1051, appendix F.
1218–0179	Methylene Chloride (29 CFR 1910.1052)	1910.1052(m)(2)(ii)(F), 1910.1052(m)(2)(iii)(C), 1910.1052(m)(3)(ii)(A), 1910.1051, appendix B.
1218–0266	Respirable Crystalline Silica Standards for General Industry, Shipyard Employment and Marine Terminals (29 CFR 1910.1053) and Construction (29 CFR 1926.1153).	1910.1053(k)(1)(ii)(G), 1910.1053(k)(3)(ii)(A), 1926.1153(j)(1)(ii)(G), 1926.1153(j)(3)(ii)(A).
1218–0195	Asbestos in Shipyards Standard (29 CFR 1915.1001)	1915.1001(n)(2)(ii)(F), 1915.1001(n)(3)(ii)(A), 1915.1001, appendix D.
1218–0134	Asbestos in Construction (29 CFR 1926.1101)	1926.1101(n)(2)(ii)(F), 1926.1101(n)(3)(ii)(A), 1926.1101, appendix D.
1218–0186	Cadmium in Construction Standard (29 CFR 1926.1127)	1926.1127(d)(2)(iv), 1926.1127(n)(1)(ii)(B), 1926.1127(n)(3)(ii)(A).
1218–0183	4,4′-Methylenedianiline (MDA) in Construction (29 CFR 1926.60).	1926.60(o)(4)(ii)(F), 1926.60(o)(5)(ii)(A).

TABLE 3—ICRS AFFECTED BY SOCIAL SECURITY NUMBER REMOVAL—Continued

OMB control No.	Title	Section modified
1218–0189	Lead in Construction Standard (29 CFR 1926.62)	1926.62(d)(5), 1926.62(n)(1)(ii)(D), 1926.62(n)(2)(ii)(A), 1926.62(n)(3)(ii)(A), 1926.62, appendix B.

In addition to the above-described changes, the agency made adjustments to some ICRs to reflect ongoing PRA interpretations that may result in a minor change to the burden hours and/or costs; these changes are not a result of this rulemaking. For example, the agency has determined that the requirement for employers to make records available upon request to the Assistant Secretary is no longer considered a collection of information. OSHA typically requests access to records during an inspection, and information collected by the agency during the investigation is not subject to the PRA under 5 CFR 1320.4(a)(2). While NIOSH may use records collected from employers for research purposes, the agency does not anticipate that NIOSH will request employers to make available records during the approval period. Therefore, the burden for the employer to make this information available to NIOSH is zero where before the burden may have been one hour.

VII. Federalism

OSHA reviewed this final rule in accordance with the Executive Order on Federalism (Executive Order 13132, 64 FR 43255, August 10, 1999), which requires that Federal agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions that would restrict State policy options, and take such actions only when clear constitutional authority exists and the problem is national in scope. Executive Order 13132 provides for preemption of State law only with the express consent of Congress. Agencies must limit any such preemption to the extent possible.

Under section 18 of the OSH Act, Congress expressly provides that States may adopt, with Federal approval, a plan for the development and enforcement of occupational safety and health standards; States that obtain Federal approval for such a plan are referred to as ''State Plans'' (29 U.S.C. 667). Occupational safety and health standards developed by State Plans must be at least as effective in providing safe and healthful employment and places of employment as the Federal standards.

While OSHA drafted this rule to protect employees in every State, Section 18(c)(2) of the OSH Act permits State Plans to develop and enforce their own standards, provided the requirements in these standards are at least as safe and healthful as the requirements specified in this final rule.

In summary, this rule complies with Executive Order 13132. In States without OSHA-approved State Plans, any standard developed from this final rule would limit State policy options in the same manner as every standard promulgated by OSHA. In States with OSHA-approved State Plans, this final rule would not significantly limit State policy options.

VIII. State Plans

When Federal OSHA promulgates a new standard or more stringent amendment to an existing standard, OSHA-approved State Plans must either amend their standards to be ''at least as effective as'' the new standard or amendment, or show that an existing state standard covering this area is already ''at least as effective'' as the new Federal standard or amendment (29 CFR 1953.5(a)). State Plan adoption must be completed within six months of the promulgation date of the final Federal rule. OSHA concludes that this final rule, by revising confusing, outdated, duplicative, or inconsistent standards, will increase the protection afforded to employees while reducing the compliance burden of employers. Therefore, within six months of the rule's promulgation date, State Plans must adopt amendments to their standards that are ''at least as effective,'' unless they demonstrate that such amendments are not necessary because their existing standards are already ''at least as effective'' in protecting workers as this final rule.

The 28 OSHA-approved State Plans are: Alaska, Arizona, California, Connecticut, Hawaii, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Michigan, Minnesota, Nevada, New Mexico, New Jersey, New York, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. The Connecticut, Illinois, New Jersey, New York, Maine, and the Virgin Islands State Plans cover state and local government employees only, while the rest cover the private sector and state and local government employees.

IX. Unfunded Mandates Reform Act of 1995

OSHA reviewed this final rule in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*) and Executive Order 12875 (56 FR 58093). As discussed in section IV (''Final Economic Analysis and Final Regulatory Flexibility Act Analysis'') of this document, the agency determined that this final rule has one revision with estimated annual new costs of $32,440 but all revisions would result in approximately $6.1 million per year in overall (net) cost savings to regulated entities.

The agency's standards do not apply to State and local governments except in States that elect voluntarily to adopt a State Plan approved by the agency. Consequently, this rule does not meet the definition of a ''Federal intergovernmental mandate'' (see section 421(5) of the UMRA (2 U.S.C. 658(5)). Therefore, for the purposes of the UMRA, the agency certifies that this final rule does not mandate that State, local, or tribal governments adopt new, unfunded regulatory obligations, or increase expenditures by the private sector of more than $100 million in any year.

X. Review by the Advisory Committee for Construction Safety and Health

OSHA must consult with the ACCSH whenever the agency proposes a rulemaking that involves the occupational safety and health of construction employees (29 CFR 1911.10, 1912.3). Accordingly, prior to the dates of meetings listed below, OSHA distributed to the ACCSH members for their review a copy of the proposed revisions that applied to construction, as well as a brief summary and explanation of these revisions. At the regular meetings on December 15–16, 2011; May 10–11, 2012; November 29, 2012; March 18, 2013; May 23, 2013; August 22, 2013; May 7–8, 2014; December 3–4, 2014; and December 2, 2015, OSHA staff presented summaries of the material provided to ACCSH members earlier and responded to the members' questions. The ACCSH

subsequently recommended that OSHA publish the proposal.

List of Subjects

29 CFR Part 1904

Recordkeeping.

29 CFR Part 1910

Chest X-ray requirements, Incorporation by reference, Pulmonary—function testing, Social Security numbers on records.

29 CFR Part 1915

Chest X-ray requirements, Incorporation by reference, Sanitation, Social Security numbers on records.

29 CFR Part 1926

Airborne contaminants, Chest X-ray requirements, Coke oven emissions, Diesel equipment, Emergency services, Incorporation by reference, Lanyards, Load limits, Manual on Uniform Traffic Control Devices (MUCTD), Personal protective equipment (PPE), Process safety management (PSM), Roll-over protective structures (ROPs), Social Security numbers on records.

Authority and Signature

Loren Sweatt, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, authorized the preparation of this document pursuant to Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), 29 CFR part 1911, and Secretary's Order 1–2012 (77 FR 3912).

Signed at Washington, DC, on April 16, 2019.

Loren Sweatt,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

Amendments to Standards

For the reasons stated in the preamble of this final rule, the Occupational Safety and Health Administration amends 29 CFR parts 1904, 1910, 1915, and 1926 as follows:

PART 1904—RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES

■ 1. Revise the authority citation for part 1904 to read as follows:

Authority: 29 U.S.C. 657, 658, 660, 666, 669, 673, Secretary of Labor's Orders No. 3–2000 (65 FR 50017) and 1–2012 (77 FR 3912), as applicable, and 5 U.S.C. 553.

Subpart C—Recordkeeping Forms and Recording Criteria

■ 2. Revise paragraph (b)(6) of § 1904.10 to read as follows:

§ 1904.10 Recording criteria for cases involving occupational hearing loss.

* * * * *

(b) * * *

(6) *If a physician or other licensed health care professional determines the hearing loss is not work-related, do I still need to record the case?* If a physician or other licensed health care professional determines, following the rules set out in § 1904.5, that the hearing loss is not work-related or that occupational noise exposure did not significantly aggravate the hearing loss, you do not have to consider the case work-related or record the case on the OSHA 300 Log.

* * * * *

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Subpart A—General

■ 3. The authority citation for part 1910, subpart A, continues to read as follows:

Authority: 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), 5–2007 (72 FR 31159), 4–2010 (75 FR 55355), or 1–2012 (77 FR 3912), as applicable.

Sections 1910.6, 1910.7, 1910.8, and 1910.9 also issued under 29 CFR 1911. Section 1910.7(f) also issued under 31 U.S.C. 9701, 29 U.S.C. 9a, 5 U.S.C. 553; Public Law 106–113 (113 Stat. 1501A–222); Pub. L. 11–8 and 111–317; and OMB Circular A–25 (dated July 8, 1993) (58 FR 38142, July 15, 1993).

■ 4. Amend § 1910.6 by:

■ a. Revising paragraphs (a)(2) through (4).

■ b. Redesignating paragraphs (i) through (z) as follows:

Old paragraph	New paragraph
(i) through (o)	(j) through (p).
(p) through (x)	(s) through (aa).
(y)	(r).
(z)	(bb).

■ c. Adding new paragraphs (i) and (q).

The revisions and additions read as follows:

§ 1910.6 Incorporation by reference.

(a) * * *

(2) Any changes in the standards incorporated by reference in this part and an official historic file of such changes are available for inspection in the Docket Office at the national office of the Occupational Safety and Health Administration, U.S. Department of Labor, Washington, DC 20210; telephone: 202–693–2350 (TTY number: 877–889–5627).

(3) The standards listed in this section are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, OSHA must publish a document in the **Federal Register** and the material must be available to the public.

(4) Copies of standards listed in this section and issued by private standards organizations are available for purchase from the issuing organizations at the addresses or through the other contact information listed below for these private standards organizations. In addition, these standards are available for inspection at any Regional Office of the Occupational Safety and Health Administration (OSHA), or at the OSHA Docket Office, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3508, Washington, DC 20210; telephone: 202–693–2350 (TTY number: 877–889–5627). They are also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of these standards at NARA, telephone: 202–741–6030, or go to *www.archives.gov/federal-register/cfr/ibr-locations.html.*

* * * * *

(i) The following material is available at the American Thoracic Society (ATS), 25 Broadway, 18th Floor New York, NY 10004; website: *www.atsjournals.org/.*

(1) Spirometric Reference Values from a Sample of the General U.S. Population. Hankinson JL, Odencrantz JR, Fedan KB. American Journal of Respiratory and Critical Care Medicine, 159:179–187, 1999, IBR approved for § 1910.1043(h).

(2) [Reserved]

* * * * *

(q) The following material is available from the International Labour Organization (ILO), 4 route des

Morillons, CH–1211 Genève 22, Switzerland; telephone: +41 (0) 22 799 6111; fax: +41 (0) 22 798 8685; website: *www.ilo.org/*.

(1) Guidelines for the Use of the ILO International Classification of Radiographs of Pneumoconioses, Revised Edition 2011, Occupational safety and health series; 22 (Rev.2011), IBR approved for § 1910.1001.

(2) [Reserved]

* * * * *

Subpart Z—Toxic and Hazardous Substances

■ 5. Revise the authority citation for part 1910, subpart Z, to read as follows:

Authority: 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), or 5–2007 (72 FR 31159), 4–2010 (75 FR 55355) or 1–2012 (77 FR 3912), as applicable; and 29 CFR part 1911.

All of subpart Z issued under 29 U.S.C. 655(b), except those substances that have exposure limits listed in Tables Z–1, Z–2, and Z–3 of § 1910.1000. The latter were issued under 29 U.S.C. 655(a).

Section 1910.1000, Tables Z–1, Z–2 and Z–3 also issued under 5 U.S.C. 553, but not under 29 CFR part 1911 except for the arsenic (organic compounds), benzene, cotton dust, and chromium (VI) listings.

Section 1910.1001 also issued under 40 U.S.C. 3704 and 5 U.S.C. 553.

Section 1910.1002 also issued under 5 U.S.C. 553, but not under 29 U.S.C. 655 or 29 CFR part 1911.

Sections 1910.1018, 1910.1029, and 1910.1200 also issued under 29 U.S.C. 653.

Section 1910.1030 also issued under Public Law 106–430, 114 Stat. 1901.

Section 1910.1201 also issued under 49 U.S.C. 1801–1819 and 5 U.S.C. 553.

■ 6. Amend § 1910.1001 by revising paragraphs (l)(2)(ii) and (l)(3)(ii), the heading to Table 1, and appendices D and E and H, sections III and IV, to read as follows:

§ 1910.1001 Asbestos.

* * * * *

(l) * * *

(2) * * *

(ii) Such examination shall include, as a minimum, a medical and work history; a complete physical examination of all systems with emphasis on the respiratory system, the cardiovascular system and digestive tract; completion of the respiratory disease standardized questionnaire in appendix D to this section, part 1; a 14- by 17-inch or other reasonably-sized standard film or digital posterior-anterior chest X-ray; pulmonary function tests to include forced vital capacity (FVC) and forced expiratory volume at 1 second (FEV_1); and any additional tests deemed appropriate by the examining physician. Classification of all chest X-rays shall be conducted in accordance with appendix E to this section.

(3) * * *

(ii) The scope of the medical examination shall be in conformance with the protocol established in paragraph (l)(2)(ii) of this section, except that the frequency of chest X-rays shall be conducted in accordance with Table 1 to this section, and the abbreviated standardized questionnaire contained in part 2 of appendix D to this section shall be administered to the employee.

Table 1 to § 1910.1001—Frequency of Chest X-ray

* * * * *

BILLING CODE 4510–26–P

APPENDIX D TO § 1910.1001—MEDICAL QUESTIONNAIRES; MANDATORY

This mandatory appendix contains the medical questionnaires that must be administered to all employees who are exposed to asbestos above the permissible exposure limit, and who will therefore be included in their employer's medical surveillance program. Part 1 of this appendix contains the Initial Medical Questionnaire, which must be obtained for all new hires who will be covered by the medical surveillance requirements. Part 2 includes the abbreviated Periodical Medical Questionnaire, which must be administered to all employees who are provided periodic medical examinations under the medical surveillance provisions of the standard in this section.

Part 1
INITIAL MEDICAL QUESTIONNAIRE

1. NAME_____

2. CLOCK NUMBER_____

3. PRESENT OCCUPATION_____

4. PLANT _____

5. ADDRESS_____

6. _____
(Zip Code)

7. TELEPHONE NUMBER_____

8. INTERVIEWER_____

9. DATE _____

10. Date of Birth _____
Month Day Year

11. Place of Birth _____

12. Sex
1. Male ___
2. Female ___

13. What is your marital status?
1. Single ___
2. Married ___
3. Widowed ___
4. Separated/ Divorced ___

14. Race (Check all that apply)
1. White ___
2. Black or African American ___
3. Asian ___
4. Hispanic or Latino ___
5. American Indian or Alaska Native ___
6. Native Hawaiian or Other Pacific Islander ___

15. What is the highest grade completed in school? _____
(For example 12 years is completion of high school)

OCCUPATIONAL HISTORY

16A. Have you ever worked full time (30 hours per week or more) for 6 months or more? 1. Yes ___ 2. No ___

IF YES TO 16A:

B. Have you ever worked for a year or more in any dusty job? 1. Yes ___ 2. No ___ 3. Does Not Apply ___

Specify job/industry _____ Total Years Worked ___

Was dust exposure: 1. Mild ___ 2. Moderate ___ 3. Severe ___

C. Have you ever been exposed to gas or chemical fumes in your work? 1. Yes ___ 2. No ___

Specify job/industry _____ Total Years Worked ___

Was exposure: 1. Mild ____ 2. Moderate ___ 3. Severe ___

D. What has been your usual occupation or job—the one you have worked at the longest?

1. Job occupation _____

2. Number of years employed in this occupation _____

3. Position/job title _____

4. Business, field or industry _____

(Record on lines the years in which you have worked in any of these industries, e.g. 1960-1969)

Have you ever worked:	YES	NO
E. In a mine?	_____	_____
F. In a quarry?	_____	_____
G. In a foundry?	_____	_____
H. In a pottery?	_____	_____
I. In a cotton, flax or hemp mill?....	_____	_____
J. With asbestos?	_____	_____

17. PAST MEDICAL HISTORY	YES	NO
A. Do you consider yourself to be in good health?	_____	_____
If "NO" state reason _____		
B. Have you any defect of vision?	_____	_____
If "YES" state nature of defect _____		
C. Have you any hearing defect?	_____	_____
If "YES" state nature of defect _____		

	YES	NO
D. Are you suffering from or have you ever suffered from:		
a. Epilepsy (or fits, seizures, convulsions)?	_____	_____
b. Rheumatic fever?	_____	_____
c. Kidney disease?	_____	_____
d. Bladder disease?	_____	_____
e. Diabetes?	_____	_____
f. Jaundice?	_____	_____

18. CHEST COLDS AND CHEST ILLNESSES

18A. If you get a cold, does it "usually" go to your chest? (Usually means more than 1/2 the time)	1. Yes ___ 2. No ___ 3. Don't get colds ___
19A. During the past 3 years, have you had any chest illnesses that have kept you off work, indoors at home, or in bed?	1. Yes ___ 2. No ___

IF YES TO 19A:

B. Did you produce phlegm with any of these chest illnesses?	1. Yes ___ 2. No ___ 3. Does Not Apply ___
C. In the last 3 years, how many such illnesses with (increased) phlegm did you have which lasted a week or more?	Number of illnesses ___ No such illnesses ___
20. Did you have any lung trouble before the age of 16?	1. Yes ___ 2. No ___
21. Have you ever had any of the following?	
1A. Attacks of bronchitis?	1. Yes ___ 2. No ___

IF YES TO 1A:

B. Was it confirmed by a doctor? 1. Yes ___ 2. No ___ 3. Does Not Apply ___

C. At what age was your first attack? Age in Years ___ Does Not Apply ___

2A. Pneumonia (include bronchopneumonia)? 1. Yes ___ 2. No ___

IF YES TO 2A:

B. Was it confirmed by a doctor? 1. Yes ___ 2. No ___ 3. Does Not Apply ___

C. At what age did you first have it? Age in Years ___ Does Not Apply ___

3A. Hay Fever? 1. Yes ___ 2. No ___

IF YES TO 3A:

B. Was it confirmed by a doctor? 1. Yes ___ 2. No ___ 3. Does Not Apply ___

C. At what age did it start? Age in Years ___ Does Not Apply ___

22A. Have you ever had chronic bronchitis? 1. Yes ___ 2. No ___

IF YES TO 22A:

B. Do you still have it? 1. Yes ___ 2. No ___ 3. Does Not Apply ___

C. Was it confirmed by a doctor? 1. Yes ___ 2. No ___ 3. Does Not Apply ___

D. At what age did it start? Age in Years ___ Does Not Apply ___

23A. Have you ever had emphysema? 1. Yes ___ 2. No ___

IF YES TO 23A:

B. Do you still have it? 1. Yes ___ 2. No ___ 3. Does Not Apply ___

C. Was it confirmed by a doctor? 1. Yes ___ 2. No ___ 3. Does Not Apply ___

D. At what age did it start? Age in Years ___ Does Not Apply ___

24A. Have you ever had asthma? 1. Yes ___ 2. No ___

IF YES TO 24A:

B. Do you still have it? 1. Yes ___ 2. No ___ 3. Does Not Apply ___

C. Was it confirmed by a doctor? 1. Yes ___ 2. No ___ 3. Does Not Apply ___

D. At what age did it start? Age in Years ___ Does Not Apply ___

E. If you no longer have it, at what age did it stop? Age stopped ___ Does Not Apply ___

25. Have you ever had:

A. Any other chest illness? 1. Yes ___ 2. No ___

If yes, please specify _____

B. Any chest operations? 1. Yes ___ 2. No ___

If yes, please specify _____

C. Any chest injuries? 1. Yes ___ 2. No ___

If yes, please specify _____

26A. Has a doctor ever told you that you had heart trouble? 1. Yes ___ 2. No ___

IF YES TO 26A:

B. Have you ever had treatment for heart trouble in the past 10 years? 1. Yes ___ 2. No ___ 3. Does Not Apply ___

27A. Has a doctor told you that you had high blood pressure? 1. Yes ___ 2. No ___

IF YES TO 27A:

B. Have you had any treatment for high blood pressure (hypertension) in the past 10 years? 1. Yes ___ 2. No ___ 3. Does Not Apply ___

28. When did you last have your chest X-rayed? (Year) ___ ___ ___ ___

29. Where did you last have your chest X-rayed (if known)? _____

What was the outcome? _____

FAMILY HISTORY

30. Were either of your natural parents ever told by a doctor that they had a chronic lung condition such as:	FATHER			MOTHER		
	1. Yes	2. No	3. Don't know	1. Yes	2. No	3. Don't know
A. Chronic Bronchitis?	___	___	___	___	___	___
B. Emphysema?	___	___	___	___	___	___
C. Asthma?	___	___	___	___	___	___
D. Lung cancer?	___	___	___	___	___	___
E. Other chest conditions?	___	___	___	___	___	___
F. Is parent currently alive?	___	___	___	___	___	___
G. Please Specify	___ Age if Living ___ Age at Death ___ Don't Know			___ Age if Living ___ Age at Death ___ Don't Know		
H. Please specify cause of death	_____			_____		

COUGH

31A. Do you usually have a cough? (Count a cough with first smoke or on first going out of doors. Exclude clearing of throat.) (If no, skip to question 31C.)	1. Yes ___	2. No ___
B. Do you usually cough as much as 4 to 6 times a day 4 or more days out of the week?	1. Yes ___	2. No ___
C. Do you usually cough at all on getting up or first thing in the morning?	1. Yes ___	2. No ___

D. Do you usually cough at all during the rest of the day or at night? 1. Yes ___ 2. No ___

IF YES TO ANY OF ABOVE (31A, B, C, OR D), ANSWER THE FOLLOWING. IF NO TO ALL, CHECK "DOES NOT APPLY" AND SKIP TO NEXT PAGE

E. Do you usually cough like this on most days for 3 consecutive months or more during the year? 1. Yes ___ 2. No ___ 3. Does not apply ___

F. For how many years have you had the cough? Number of years ___ Does not apply ___

32A. Do you usually bring up phlegm from your chest? Count phlegm with the first smoke or on first going out of doors. Exclude phlegm from the nose. Count swallowed phlegm.) (If no, skip to 32C) 1. Yes ___ 2. No ___

B. Do you usually bring up phlegm like this as much as twice a day 4 or more days out of the week? 1. Yes ___ 2. No ___

C. Do you usually bring up phlegm at all on getting up or first thing in the morning? 1. Yes ___ 2. No ___

D. Do you usually bring up phlegm at all on during the rest of the day or at night? 1. Yes ___ 2. No ___

IF YES TO ANY OF THE ABOVE (32A, B, C, OR D), ANSWER THE FOLLOWING:

IF NO TO ALL, CHECK "DOES NOT APPLY" AND SKIP TO 33A

E. Do you bring up phlegm like this on most days for 3 consecutive months or more during the year? 1. Yes ___ 2. No ___ 3. Does not apply ___

F. For how many years have you had trouble with phlegm? Number of years ___ Does not apply ___

EPISODES OF COUGH AND PHLEGM

33A. Have you had periods or episodes of (increased*) cough and phlegm lasting for 3 weeks or more each year?
*(For persons who usually have cough and/or phlegm)

1. Yes ___ 2. No ___

IF YES TO 33A

B. For how long have you had at least 1 such episode per year?

Number of years ___
Does not apply ___

WHEEZING

34A. Does your chest ever sound wheezy or whistling

1. When you have a cold? 1. Yes ___ 2. No ___

2. Occasionally apart from colds? 1. Yes ___ 2. No ___

3. Most days or nights? 1. Yes ___ 2. No ___

B. For how many years has this been present?

Number of years ___
Does not apply ___

35A. Have you ever had an attack of wheezing that has made you feel short of breath? 1. Yes ___ 2. No ___

IF YES TO 35A

B. How old were you when you had your first such attack?

Age in years ___
Does not apply ___

C. Have you had 2 or more such episodes? 1. Yes ___ 2. No ___
3. Does not apply ___

D. Have you ever required medicine or treatment for the(se) attack(s)? 1. Yes ___ 2. No ___
3. Does not apply ___

BREATHLESSNESS

36. If disabled from walking by any condition other than heart or lung disease, please describe and proceed to question 38A. — Nature of condition(s) _____ _____

37A. Are you troubled by shortness of breath when hurrying on the level or walking up a slight hill? — 1. Yes ___ 2. No ___

IF YES TO 37A

B. Do you have to walk slower than people of your age on the level because of breathlessness? — 1. Yes ___ 2. No ___ 3. Does not apply ___

C. Do you ever have to stop for breath when walking at your own pace on the level? — 1. Yes ___ 2. No ___ 3. Does not apply ___

D. Do you ever have to stop for breath after walking about 100 yards (or after a few minutes) on the level? — 1. Yes ___ 2. No ___ 3. Does not apply ___

E. Are you too breathless to leave the house or breathless on dressing or climbing one flight of stairs? — 1. Yes ___ 2. No ___ 3. Does not apply ___

TOBACCO SMOKING

38A. Have you ever smoked cigarettes? (No means less than 20 packs of cigarettes or 12 oz. of tobacco in a lifetime or less than 1 cigarette a day for 1 year.) — 1. Yes ___ 2. No ___

IF YES TO 38A

B. Do you now smoke cigarettes (as of one month ago) — 1. Yes ___ 2. No ___ 3. Does not apply ___

C. How old were you when you first started regular cigarette smoking?	Age in years ___ Does not apply ___
D. If you have stopped smoking cigarettes completely, how old were you when you stopped?	Age stopped ___ Check if still smoking ___ Does not apply ___
E. How many cigarettes do you smoke per day now?	Cigarettes per day ___ Does not apply ___
F. On the average of the entire time you smoked, how many cigarettes did you smoke per day?	Cigarettes per day ___ Does not apply ___
G. Do or did you inhale the cigarette smoke?	1. Does not apply ___ 2. Not at all ___ 3. Slightly ___ 4. Moderately ___ 5. Deeply ___
39A. Have you ever smoked a pipe regularly? (Yes means more than 12 oz. of tobacco in a lifetime.)	1. Yes ___ 2. No ___

IF YES TO 39A:
FOR PERSONS WHO HAVE EVER SMOKED A PIPE

B. 1. How old were you when you started to smoke a pipe regularly?	Age ___
2. If you have stopped smoking a pipe completely, how old were you when you stopped?	Age stopped ___ Check if still smoking pipe ___ Does not apply ___

C. On the average over the entire time you smoked a pipe, how much pipe tobacco did you smoke per week?	___ oz. per week (a standard pouch of tobacco contains 1 1/2 oz.) ___ Does not apply
D. How much pipe tobacco are you smoking now?	oz. per week ___ Not currently smoking a pipe ___
E. Do you or did you inhale the pipe smoke?	1. Never smoked ___ 2. Not at all ___ 3. Slightly ___ 4. Moderately ___ 5. Deeply ___
40A. Have you ever smoked cigars regularly?	1. Yes ___ 2. No ___ (Yes means more than 1 cigar a week for a year)

IF YES TO 40A

FOR PERSONS WHO HAVE EVER SMOKED A CIGAR

B. 1. How old were you when you started smoking cigars regularly?	Age ___
2. If you have stopped smoking cigars completely, how old were you when you stopped smoking cigars?	Age stopped ___ Check if still ___ Does not apply ___
C. On the average over the entire time you smoked cigars, how many cigars did you smoke per week?	Cigars per week ___ Does not apply ___
D. How many cigars are you smoking per week now?	Cigars per week ___ Check if not smoking cigars currently ___

E. Do or did you inhale the cigar smoke?	1. Never smoked ___ 2. Not at all ___ 3. Slightly ___ 4. Moderately ___ 5. Deeply ___

Signature _____ Date _____

.

Part 2

PERIODIC MEDICAL QUESTIONNAIRE

1. NAME _____

2. CLOCK NUMBER ___ ___ ___ ___ ___ ___ ___

3. PRESENT OCCUPATION _____

4. PLANT _____

5. ADDRESS _____

6. _____
(Zip Code)

7. TELEPHONE NUMBER _____

8. INTERVIEWER _____

9. DATE _____

10. What is your marital status? 1. Single ___ 2. Married ___ 3. Widowed ___ 4. Separated/ Divorced ___

11. OCCUPATIONAL HISTORY

11A. In the past year, did you work full time (30 hours per week or more) for 6 months or more? 1. Yes ___ 2. No ___

IF YES TO 11A:

11B. In the past year, did you work in a dusty job? 1. Yes ___ 2. No ___ 3. Does not Apply ___

11C. Was dust exposure: 1. Mild ___ 2. Moderate ___ 3. Severe ___

11D. In the past year, were you exposed to gas or chemical fumes in your work? 1. Yes ___ 2. No ___

11E. Was exposure: 1. Mild ___ 2. Moderate ___ 3. Severe ___

11F. In the past year, what was your:
1. Job/occupation? _____
2. Position/job title? _____

12. RECENT MEDICAL HISTORY

12A. Do you consider yourself to be in good health? Yes ___ No ___

If NO, state reason _____

12B. In the past year, have you developed:

	Yes	No
Epilepsy?	___	___
Rheumatic fever?	___	___
Kidney disease?	___	___
Bladder disease?	___	___
Diabetes?	___	___
Jaundice?	___	___
Cancer?	___	___

13. CHEST COLDS AND CHEST ILLNESSES

13A. If you get a cold, does it "usually" go to your chest? (usually means more than 1/2 the time)
1. Yes ___ 2. No ___
3. Don't get colds ___

14A. During the past year, have you had any chest illnesses that have kept you off work, indoors at home, or in bed?
1. Yes ___ 2. No ___
3. Does Not Apply ___

IF YES TO 14A:

14B. Did you produce phlegm with any of these chest illnesses?
1. Yes ___ 2. No ___
3. Does Not Apply ___

14C. In the past year, how many such illnesses with (increased) phlegm did you have which lasted a week or more?
Number of illnesses ___
No such illnesses ___

15. RESPIRATORY SYSTEM

In the past year have you had:

	Yes or No	Further Comment on Positive Answers
Asthma	_____	
Bronchitis	_____	
Hay Fever	_____	
Other Allergies	_____	

	Yes or No	Further Comment on Positive Answers
Pneumonia	_____	
Tuberculosis	_____	
Chest Surgery	_____	
Other Lung Problems	_____	
Heart Disease	_____	

Do you have:

	Yes or No	Further Comment on Positive Answers
Frequent colds	_____	
Chronic cough	_____	
Shortness of breath when walking or climbing one flight or stairs	_____	

Do you:

Wheeze	_____	
Cough up phlegm	_____	
Smoke cigarettes	_____	Packs per day ____ How many years ___

Date _____ Signature _____

BILLING CODE 4510–26–C

Appendix E to § 1910.1001—Classification of Chest X-Rays—Mandatory

(a) Chest X-rays shall be classified in accordance with the Guidelines for the use of the ILO International Classification of Radiographs of Pneumoconioses (revised edition 2011) (incorporated by reference, see § 1910.6), and recorded on a classification form following the format of the CDC/NIOSH (M) 2.8 form. As a minimum, the content within the bold lines of this form (items 1 through 4) shall be included. This form is not to be submitted to NIOSH.

(b) All X-rays shall be classified only by a B-Reader, a board eligible/certified radiologist, or an experienced physician with known expertise in pneumoconioses.

(c) Whenever classifying chest X-ray film, the physician shall have immediately available for reference a complete set of the ILO standard format radiographs provided for use with the Guidelines for the use of the ILO International Classification of Radiographs of Pneumoconioses (revised edition 2011).

(d) Whenever classifying digitally-acquired chest X-rays, the physician shall have immediately available for reference a complete set of ILO standard digital chest radiographic images provided for use with the Guidelines for the Use of the ILO International Classification of Radiographs of Pneumoconioses (revised edition 2011). Classification of digitally-acquired chest X-rays shall be based on the viewing of images displayed as electronic copies and shall not be based on the viewing of hard copy printed transparencies of images.

* * * * *

Appendix H to § 1910.1001—Medical Surveillance Guidelines for Asbestos Non-Mandatory

* * * * *

III. Signs and Symptoms of Exposure-Related Disease

The signs and symptoms of lung cancer or gastrointestinal cancer induced by exposure to asbestos are not unique, except that a chest X-ray of an exposed patient with lung cancer may show pleural plaques, pleural calcification, or pleural fibrosis, and may also show asbestosis (*i.e.,* small irregular parenchymal opacities). Symptoms characteristic of mesothelioma include shortness of breath, pain in the chest or abdominal pain. Mesothelioma has a much longer average latency period compared with lung cancer (40 years versus 15–20 years), and mesothelioma is therefore more likely to

be found among workers who were first exposed to asbestos at an early age. Mesothelioma is a fatal disease.

Asbestosis is pulmonary fibrosis caused by the accumulation of asbestos fibers in the lungs. Symptoms include shortness of breath, coughing, fatigue, and vague feelings of sickness. When the fibrosis worsens, shortness of breath occurs even at rest. The diagnosis of asbestosis is most commonly based on a history of exposure to asbestos, the presence of characteristic radiologic abnormalities, end-inspiratory crackles (rales), and other clinical features of fibrosing lung disease. Pleural plaques and thickening may be observed on chest X-rays. Asbestosis is often a progressive disease even in the absence of continued exposure, although this appears to be a highly individualized characteristic. In severe cases, death may be caused by respiratory or cardiac failure.

IV. Surveillance and Preventive Considerations

As noted in section III of this appendix, exposure to asbestos has been linked to an increased risk of lung cancer, mesothelioma, gastrointestinal cancer, and asbestosis among occupationally exposed workers. Adequate screening tests to determine an employee's potential for developing serious chronic diseases, such as cancer, from exposure to asbestos do not presently exist. However, some tests, particularly chest X-rays and pulmonary function tests, may indicate that an employee has been overexposed to asbestos increasing his or her risk of developing exposure-related chronic diseases. It is important for the physician to become familiar with the operating conditions in which occupational exposure to asbestos is likely to occur. This is particularly important in evaluating medical and work histories and in conducting physical examinations. When an active employee has been identified as having been overexposed to asbestos, measures taken by the employer to eliminate or mitigate further exposure should also lower the risk of serious long-term consequences.

The employer is required to institute a medical surveillance program for all employees who are or will be exposed to asbestos at or above the permissible exposure limit (0.1 fiber per cubic centimeter of air). All examinations and procedures must be performed by or under the supervision of a licensed physician, at a reasonable time and place, and at no cost to the employee.

Although broad latitude is given to the physician in prescribing specific tests to be included in the medical surveillance program, OSHA requires inclusion of the following elements in the routine examination:

(i) Medical and work histories with special emphasis directed to symptoms of the respiratory system, cardiovascular system, and digestive tract.

(ii) Completion of the respiratory disease questionnaire contained in appendix D of this section.

(iii) A physical examination including a chest X-ray and pulmonary function test that includes measurement of the employee's forced vital capacity (FVC) and forced expiratory volume at one second (FEV_1).

(iv) Any laboratory or other test that the examining physician deems by sound medical practice to be necessary.

The employer is required to make the prescribed tests available at least annually to those employees covered; more often than specified if recommended by the examining physician; and upon termination of employment.

The employer is required to provide the physician with the following information: A copy of the standard in this section (including all appendices to this section); a description of the employee's duties as they relate to asbestos exposure; the employee's representative level of exposure to asbestos; a description of any personal protective and respiratory equipment used; and information from previous medical examinations of the affected employee that is not otherwise available to the physician. Making this information available to the physician will aid in the evaluation of the employee's health in relation to assigned duties and fitness to wear personal protective equipment, if required.

The employer is required to obtain a written opinion from the examining physician containing the results of the medical examination; the physician's opinion as to whether the employee has any detected medical conditions that would place the employee at an increased risk of exposure-related disease; any recommended limitations on the employee or on the use of personal protective equipment; and a statement that the employee has been informed by the physician of the results of the medical examination and of any medical conditions related to asbestos exposure that require further explanation or treatment. This written opinion must not reveal specific findings or diagnoses unrelated to exposure to asbestos, and a copy of the opinion must be provided to the affected employee.

* * * * *

■ 7. Amend § 1910.1018 by revising paragraphs (n)(2)(ii)(A) and (n)(3)(i) and (ii), appendix A, section VI, and appendix C, section I, to read as follows:

§ 1910.1018 Inorganic arsenic.

* * * * *

(n) * * *

(2) * * *

(ii) * * *

(A) A standard film or digital posterior-anterior chest X-ray;

* * * * *

(3) * * *

(i) Examinations must be provided in accordance with paragraphs (n)(2)(i) and (n)(2)(ii)(B) and (C) of this section at least annually.

(ii) Whenever a covered employee has not taken the examinations specified in paragraphs (n)(2)(i) and (n)(2)(ii)(B) and (C) of this section within six (6) months preceding the termination of employment, the employer shall provide such examinations to the employee upon termination of employment.

* * * * *

Appendix A to § 1910.1018—Inorganic Arsenic Substance Information Sheet

* * * * *

VI. Medical Examinations

If your exposure to arsenic is over the Action Level (5 µg/m3)—(including all persons working in regulated areas) at least 30 days per year, or you have been exposed to arsenic for more than 10 years over the Action Level, your employer is required to provide you with a medical examination. The examination shall be every 6 months for employees over 45 years old or with more than 10 years exposure over the Action Level and annually for other covered employees. The medical examination must include a medical history; a chest X-ray (during initial examination only); skin examination and a nasal examination. The examining physician will provide a written opinion to your employer containing the results of the medical exams. You should also receive a copy of this opinion. The physician must not tell your employer any conditions he detects unrelated to occupational exposure to arsenic but must tell you those conditions.

* * * * *

Appendix C to § 1910.1018—Medical Surveillance Guidelines

I. General

Medical examinations are to be provided for all employees exposed to levels of inorganic arsenic above the action level (5 µg/m3) for at least 30 days per year (which would include among others, all employees, who work in regulated areas). Examinations are also to be provided to all employees who have had 10 years or more exposure above the action level for more than 30 days per year while working for the present or predecessor employer though they may no longer be exposed above the level.

An initial medical examination is to be provided to all such employees by December 1, 1978. In addition, an initial medical examination is to be provided to all employees who are first assigned to areas in which worker exposure will probably exceed 5 µg/m3 (after August 1, 1978) at the time of initial assignment. In addition to its immediate diagnostic usefulness, the initial examination will provide a baseline for comparing future test results. The initial examination must include as a minimum the following elements:

(1) A work and medical history, including a smoking history, and presence and degree of respiratory symptoms such as breathlessness, cough, sputum production, and wheezing;

(2) A 14″ by 17″ or other reasonably-sized standard film or digital posterior-anterior chest X-ray;

(3) A nasal and skin examination; and

(4) Other examinations which the physician believes appropriate because of the employee's exposure to inorganic arsenic or because of required respirator use.

Periodic examinations are also to be provided to the employees listed in the first paragraph of this section. The periodic examinations shall be given annually for those covered employees 45 years of age or less with fewer than 10 years employment in areas where employee exposure exceeds the action level (5 $\mu g/m^3$). Periodic examinations need not include sputum cytology or chest X-ray and only an updated medical history is required.

Periodic examinations for other covered employees shall be provided every six (6) months. These examinations shall include all tests required in the initial examination, except the chest X-ray, and the medical history need only be updated.

The examination contents are minimum requirements. Additional tests such as lateral and oblique X-rays or pulmonary function tests may be useful. For workers exposed to three arsenicals which are associated with lymphatic cancer, copper acetoarsenite, potassium arsenite, or sodium arsenite the examination should also include palpation of superficial lymph nodes and complete blood count.

* * * * *

■ 8. Amend § 1910.1027 by revising paragraph (l)(4)(ii)(C) and appendix D to read as follows:

§ 1910.1027 Cadmium.

* * * * *

(l) * * *

(4) * * *

(ii) * * *

(C) A 14 inch by 17 inch or other reasonably-sized standard film or digital posterior-anterior chest X-ray (after the initial X-ray, the frequency of chest X-rays is to be determined by the examining physician);

* * * * *

BILLING CODE 4510–26–P

APPENDIX D TO § 1910.1027—OCCUPATIONAL HEALTH HISTORY INTERVIEW WITH REFERENCE TO CADMIUM EXPOSURE

Directions

(To be read by employee and signed prior to the interview)

Please answer the questions you will be asked as completely and carefully as you can. These questions are asked of everyone who works with cadmium. You will also be asked to give blood and urine samples. The doctor will give your employer a written opinion on whether you are physically capable of working with cadmium. Legally, the doctor cannot share personal information you may tell him/her with your employer. The following information is considered strictly confidential. The results of the tests will go to you, your doctor and your employer. You will also receive an information sheet explaining the results of any biological monitoring or physical examinations performed. If you are just being hired, the results of this interview and examination will be used to:

(1) Establish your health status and see if working with cadmium might be expected to cause unusual problems,

(2) Determine your health status today and see if there are changes over time,

(3) See if you can wear a respirator safely.

If you are not a new hire:

OSHA says that everyone who works with cadmium can have periodic medical examinations performed by a doctor. The reasons for this are:

a) If there are changes in your health, either because of cadmium or some other reason, to find them early,

b) to prevent kidney damage.

Please sign below.

I have read these directions and understand them:

_____
Employee signature

_____
Date

Thank you for answering these questions. (Suggested Format)

Name_____

Age _____

Company_____

Job_____

Type of Preplacement Exam:

[ ] Periodic

[ ] Termination

[ ] Initial

[ ] Other

Blood Pressure_____

Pulse Rate_____

1. How long have you worked at the job listed above?
   [ ] Not yet hired

   [ ] Number of months

   [ ] Number of years

2. Job Duties etc.

_____

_____

_____

3. Have you ever been told by a doctor that you had bronchitis?
   [ ] Yes
   [ ] No

   If yes, how long ago?
   [ ] Number of months
   [ ] Number of years

4. Have you ever been told by a doctor that you had emphysema?
   [ ] Yes
   [ ] No

   If yes, how long ago?
   [ ] Number of years
   [ ] Number of months

5. Have you ever been told by a doctor that you had other lung problems?
   [ ] Yes
   [ ] No

   If yes, please describe type of lung problems and when you had these problems.

_____

_____

_____

6. In the past year, have you had a cough?
   [ ] Yes
   [ ] No

   If yes, did you cough up sputum?
   [ ] Yes
   [ ] No

   If yes, how long did the cough with sputum production last?
   [ ] Less than 3 months
   [ ] 3 months or longer

   If yes, for how many years have you had episodes of cough with sputum production lasting this long?
   [ ] Less than one
   [ ] 1
   [ ] 2
   [ ] Longer than 2

7. Have you ever smoked cigarettes?
   [ ] Yes
   [ ] No

8. Do you now smoke cigarettes?
   [ ] Yes
   [ ] No

9. If you smoke or have smoked cigarettes, for how many years have you smoked, or did you smoke?
   [ ] Less than 1 year
   [ ] Number of years

What is or was the greatest number of packs per day that you have smoked?

[ ] Number of packs

If you quit smoking cigarettes, how many years ago did you quit?

[ ] Less than 1 year

[ ] Number of years

How many packs a day do you now smoke?

[ ] Number of packs per day

10. Have you ever been told by a doctor that you had a kidney or urinary tract disease or disorder?

[ ] Yes

[ ] No

11. Have you ever had any of these disorders?

Kidney stones.....[ ] Yes [ ] No

Protein in urine.....[ ] Yes [ ] No

Blood in urine .....[ ] Yes [ ] No

Difficulty urinating.....[ ] Yes [ ] No

Other kidney/Urinary disorders.....[ ] Yes [ ] No

Please describe problems, age, treatment, and follow up for any kidney or urinary problems you have had:

_____

_____

_____

12. Have you ever been told by a doctor or other health care provider who took your blood pressure that your blood pressure was high?

[ ] Yes

[ ] No

13. Have you ever been advised to take any blood pressure medication?

[ ] Yes

[ ] No

14. Are you presently taking any blood pressure medication?

[ ] Yes

[ ] No

15. Are you presently taking any other medication?

[ ] Yes

[ ] No

16. Please list any blood pressure or other medications and describe how long you have been taking each one:

Medicine	How long Taken

17. Have you ever been told by a doctor that you have diabetes? (sugar in your blood or urine)

[ ] Yes

[ ] No

If yes, do you presently see a doctor about your diabetes?

[ ] Yes

[ ] No

If yes, how do you control your blood sugar?

[ ] Diet alone

[ ] Diet plus oral medicine

[ ] Diet plus insulin (injection)

18. Have you ever been told by a doctor that you had:

Anemia	[ ] Yes	[ ] No
A low blood count?	[ ] Yes	[ ] No

19. Do you presently feel that you tire or run out of energy sooner than normal or sooner than other people your age?

[ ] Yes

[ ] No

If yes, for how long have you felt that you tire easily?

[ ] Less than 1 year

[ ] Number of years

20. Have you given blood within the last year?

[ ] Yes

[ ] No

If yes, how many times?

[ ] Number of times

How long ago was the last time you gave blood?

[ ] Less than 1 month

[ ] Number of months

21. Within the last year have you had any injuries with heavy bleeding?

[ ] Yes

[ ] No

If yes, how long ago?

[ ] Less than 1 month

[ ] Number of months

Describe: _____

_____

_____

22. Have you recently had any surgery?

[ ] Yes

[ ] No

If yes, please describe: _____

_____

_____

23. Have you seen any blood lately in your stool or after a bowel movement?

[ ] Yes

[ ] No

24. Have you ever had a test for blood in your stool?

[ ] Yes

[ ] No

If yes, did the test show any blood in the stool?

[ ] Yes

[ ] No

What further evaluation and treatment were done? _____

_____

_____

_____

_____

The following questions pertain to the ability to wear a respirator.
Additional information for the physician can be found in The Respiratory Protective Devices Manual.

25. Have you ever been told by a doctor that you have asthma?

[ ] Yes

[ ] No

If yes, are you presently taking any medication for asthma? Mark all that apply.

[ ] Shots

[ ] Pills

[ ] Inhaler

26. Have you ever had a heart attack?

[ ] Yes

[ ] No

If yes, how long ago?

[ ] Number of years

[ ] Number of months

27. Have you ever had pains in your chest?

[ ] Yes

[ ] No

If yes, when did it usually happen?

[ ] While resting

[ ] While working

[ ] While exercising

[ ] Activity didn't matter

28. Have you ever had a thyroid problem?

[ ] Yes

[ ] No

29. Have you ever had a seizure or fits?

[ ] Yes

[ ] No

30. Have you ever had a stroke (cerebrovascular accident)?

[ ] Yes

[ ] No

31. Have you ever had a ruptured eardrum or a serious hearing problem?

[ ] Yes

[ ] No

32. Do you now have a claustrophobia, meaning fear of crowded or closed in spaces or any psychological problems that would make it hard for you to wear a respirator?

[ ] Yes

[ ] No

The following questions pertain to reproductive history.

33. Have you or your partner had a problem conceiving a child?

[ ] Yes

[ ] No

If yes, specify:

[ ] Self

[ ] Present mate

[ ] Previous mate

34. Have you or your partner consulted a physician for a fertility or other reproductive problem?

[ ] Yes

[ ] No

If yes, specify who consulted the physician:

[ ] Self

[ ] Spouse/partner

[ ] Self and partner

If yes, specify diagnosis made: _____

_____

_____

_____

_____

35. Have you or your partner ever conceived a child resulting in a miscarriage, still birth or a child with malformations or birth defects?

[ ] Yes

[ ] No

If yes, specify:

[ ] Miscarriage

[ ] Still birth

[ ] Malformations or birth defects

If outcome was a child with malformations or birth defects, please specify type:

_____

_____

36. Was this outcome a result of a pregnancy of:

[ ] Yours with present partner

[ ] Yours with a previous partner

37. Did the timing of any abnormal pregnancy outcome coincide with present employment?

[ ] Yes

[ ] No

List dates of occurrences: _____

_____

_____

38. What is the occupation of your spouse or partner?

_____

_____

For Women Only

39. Do you have menstrual periods?

[ ] Yes

[ ] No

Have you had menstrual irregularities?

[ ] Yes

[ ] No

If yes, specify type: _____

_____

_____

If yes, what was the approximated date this problem began? _____

_____

Approximate date problem stopped? _____

_____

For Men Only

40. Have you ever been diagnosed by a physician as having prostate gland problem(s)?

[ ] Yes

[ ] No

If yes, please describe type of problem(s) and what was done to evaluate and treat the problem(s): _____

_____

_____

BILLING CODE 4510–26–C

* * * * *

■ 9. Amend § 1910.1029 by revising paragraphs (j)(2)(ii) and (j)(3), appendix A, section VI, and appendix B, section II(A), to read as follows:

§ 1910.1029 Coke oven emissions.

* * * * *

(j) * * *

(2) * * *

(ii) A 14- by 17-inch or other reasonably-sized standard film or digital posterior-anterior chest X-ray;

* * * * *

(3) *Periodic examinations.* (i) The employer shall provide the examinations specified in paragraphs (j)(2)(i) and (iii) through (vi) of this section at least annually for employees covered under paragraph (j)(1)(i) of this section.

(ii) The employer must provide the examinations specified in paragraphs (j)(2)(i) and (iii) through (vii) of this section at least annually for employees 45 years of age or older or with five (5) or more years employment in the regulated area.

(iii) Whenever an employee who is 45 years of age or older or with five (5) or more years employment in a regulated area transfers or is transferred from employment in a regulated area, the employer must continue to provide the examinations specified in paragraphs (j)(2)(i) and (iii) through (vii) of this section at least annually as long as that employee is employed by the same employer or a successor employer.

* * * * *

Appendix A to § 1910.1029—Coke Oven Emissions Substance Information Sheet

* * * * *

VI. Medical Examinations

If you work in a regulated area at least 30 days per year, your employer is required to provide you with a medical examination every year. The initial medical examination must include a medical history, a chest X-ray, pulmonary function test, weight comparison, skin examination, a urinalysis, and a urine cytology exam for early detection of urinary cancer. Periodic examinations shall include all tests required in the initial examination, except that (1) the x-ray is to be performed during initial examination only and (2) the urine cytologic test is to be performed only on those employees who are 45 years or older or who have worked for 5 or more years in the regulated area. The examining physician will provide a written opinion to your employer containing the results of the medical exams. You should also receive a copy of this opinion.

* * * * *

Appendix B to § 1910.1029—Industrial Hygiene and Medical Surveillance Guidelines

* * * * *

II. Medical Surveillance Guidelines

A. *General.* The minimum requirements for the medical examination for coke oven workers are given in the standard in paragraph (j) of this section. The initial examination is to be provided to all coke oven workers who work at least 30 days in the regulated area. The examination includes a 14″ by 17″ or other reasonably-sized standard film or digital posterior-anterior chest X-ray reading, pulmonary function tests (FVC and FEV_1), weight, urinalysis, skin examination, and a urinary cytologic examination. These tests are needed to serve as the baseline for comparing the employee's future test results. Periodic exams include all the elements of the initial exams, except that (1) the x-ray is to be performed during initial examination only and (2) the urine cytologic test is to be performed only on those employees who are 45 years or older or who have worked for 5 or more years in the regulated area. The examination contents are minimum requirements; additional tests such as lateral and oblique X-rays or additional pulmonary function tests may be performed if deemed necessary.

* * * * *

■ 10. Amend § 1910.1043 by:

■ a. Revising paragraphs (h)(2)(iii), (h)(3)(ii), and (n)(1) and appendices B–I, B–II, and B–III; and

■ b. Removing and reserving appendix C; and

■ c. Revising appendix D.

The revisions read as follows:

§ 1910.1043 Cotton dust.

* * * * *

(h) * * *

(2) * * *

(iii) A pulmonary function measurement, including forced vital capacity (FVC) and forced expiratory volume in one second (FEV_1), and determination of the FEV_1/FVC ratio shall be made. FVC, FEV_1, and FEV_1/FVC ratio values shall be compared to appropriate race/ethnicity-specific Lower Limit of Normal (LLN) values and predicted values published in Spirometric Reference Values from a Sample of the General U.S. Population, American Journal of Respiratory and Critical Care Medicine, 159(1): 179–187, January 1999 (commonly known as the NHANES III reference data set) (incorporated by reference, see § 1910.6). To obtain reference values for Asian-Americans, Spirometric Reference Values FEV_1 and FVC predicted and LLN values for Caucasians shall be multiplied by 0.88 to adjust for ethnic differences. These determinations shall be made for each employee before the employee enters the workplace on the first day of the work week, preceded by at least 35 hours of no exposure to cotton dust. The tests shall be repeated during the shift, no less than 4 and no more than 10 hours after the beginning of the work shift; and, in any event, no more than one hour after cessation of exposure. Such exposure shall be typical of the employee's usual workplace exposure.

* * * * *

(3) * * *

(ii) Medical surveillance as required in paragraph (h)(3)(i) of this section shall be provided every six months for all employees in the following categories:

(A) An FEV_1 greater than the LLN, but with an FEV_1 decrement of 5 percent or 200 ml. on a first working day;

(B) An FEV_1 of less than the LLN; or

(C) Where, in the opinion of the physician, any significant change in questionnaire findings, pulmonary function results, or other diagnostic tests have occurred.

* * * * *

(n) * * *

(1) Appendices B and D of this section are incorporated as part of this section and the contents of these appendices are mandatory.

* * * * *

BILLING CODE 4510–26–P

APPENDIX B-I -- RESPIRATORY QUESTIONNAIRE

RESPIRATORY QUESTIONNAIRE

A. IDENTIFICATION DATA

PLANT _____

DAY MONTH YEAR

(figures) (last 2 digits)

NAME _____ DATE OF INTERVIEW _____

(Surname)

_____ DATE OF BIRTH _____

(First Names)

M F

ADDRESS _____ AGE ____ (8, 9) SEX _____(10)

RACE (11) (Check all that apply)

1. White ___
2. Black or African American ___
3. Asian ___
4. Hispanic or Latino ___
5. American Indian or Alaska Native ___
6. Native Hawaiian or Other Pacific Islander ___

INTERVIEWER: 1 2 3 4 5 6 7 8 (12)

WORK SHIFT: 1st _____ 2nd _____ 3rd _____ (13)

STANDING HEIGHT _____ (14, 15)

WEIGHT _____ (16, 18)

PRESENT WORK AREA

If working in more than one specified work area, X area where most of the work shift is spent. If "other," but spending 25% of the work shift in one of the specified work areas, classify in that work area. If carding department employee, check area within that department where most of the work shift is spent (if in doubt, check "throughout"). For work areas such as spinning and weaving where many work rooms may be involved, be sure to check to specific work room to which the employee is assigned - if he works in more than one work room within a department classify as 7 (all) for that department.

	Work-room Number	(19) Open	(20) Pick	Area	(21) Card #1	(22) #2	(23) Spin	(24) Wind	(25) Twist
AT RISK (cotton & cotton blend)	1			Cards					
	2			Draw					
	3			Comb					
	4			Thru Out					
	5								
	6								
	7 (all)								
Control (synthe-tic & wo ol)	8								
Ex-Worker (cotton)	9								

Continued –

	Work-Room Number	(26) Spool	(27) Warp	(28) Slash	(29) Weave	(30) Other
AT RISK (cotton & cotton blend)	1					
	2					
	3					
	4					
	5					
	6					
	7 (all)					
Control (synthetic & wool)	8					
Ex-Worker (cotton)	9					

Use actual wording of each question. Put X in appropriate square after each question. When in doubt record "No". When no square, circle appropriate answer.

B. COUGH

(on getting up)
Do you usually cough first thing in the morning? _____

Yes _____ No _____ (31)

(Count a cough with first smoke or on "first going out of doors." Exclude clearing throat or a single cough.)

Do you usually cough during the day or at night? Yes _____ No _____ (32)

(Ignore an occasional cough.)

If `Yes' to either question (31-32):

Do you cough like this on most days for as much as three months a year? Yes _____ No _____ (33)

Do you cough on any particular day of the week? Yes _____ No _____ (34)

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	
If 'Yes': Which day?	Mon	Tues	Wed	Thur	Fri	Sat	Sun	(35)

C. PHLEGM or alternative word to suit local custom.

(on getting up)

Do you usually bring up any phlegm from your chest first thing in the morning? (Count phlegm with the first smoke or on "first going out of doors." Exclude phlegm from the nose. Count swallowed phlegm.) Yes _____ No _____ (36)

Do you usually bring up any phlegm from your chest during the day or at night? (Accept twice or more.) Yes _____ No _____ (37)

If `Yes' to question (36) or (37):

Do you bring up any phlegm like this on most days for as much as three months each year? Yes _____ No _____ (38)

If `Yes' to question (33) or (38):

(cough)

How long have you had this phlegm?

(Write in number of years)

(1) ____ 2 years or less (39)

(2) ____ More than 2 year-9 years

(3) ____ 10-19 years

(4) ____ 20+ years

* These words are for subjects who work at night

D. CHEST ILLNESSES

In the past three years, have you had a period of (increased) *cough and phlegm lasting for 3 weeks or more?

(1) ____ No (40)

(2) ____ Yes, only one period

(3) ____ Yes, two or more periods

*For subjects who usually have phlegm

During the past 3 years have you had any chest illness which has kept you off work, indoors at home or in bed? (For as long as one week, flu?)

Yes _____ No _____ (41)

If `Yes' to (41):

Did you bring up (more) phlegm than usual in any of these illnesses?

Yes _____ No _____ (42)

If `Yes' to (42):

During the past three years have you had:

Only one such illness with increased phlegm? (1) _____ (43)

More than one such illness: (2) _____(44)

Br. Grade _____

E. TIGHTNESS

Does your chest ever feel tight or your breathing become difficult?

Yes _____ No _____ (45)

Is your chest tight or your breathing difficult on any particular day of the week? (after a week or 10 days from the mill)

Yes _____ No _____ (46)

If `Yes': Which day? (3) (4) (5) (6) (7) (8)

Mon. ^ Tues. Wed. Thur. Fri. Sat. Sun. (47)

(1) / \ (2)

Sometimes Always

If `Yes' Monday: At what time on Monday does your chest feel tight or your breathing difficult?

(1) ___ Before entering the mill (48)

(2) ___ After entering the mill

(Ask only if NO to Question (45))

In the past, has your chest ever been tight or your breathing difficult on any particular day of the week?

Yes _____ No _____ (49)

If `Yes': Which day? (3) (4) (5) (6) (7) (8)

Mon. ^ Tues. Wed. Thur. Fri. Sat. Sun. (50)

(1) / \ (2)

Sometimes Always

F. BREATHLESSNESS

If disabled from walking by any condition other than heart or lung disease put "X" here and leave questions (52-60) unasked. _____(51)

Are you ever troubled by shortness of breath, when hurrying on the level or walking up a slight hill? Yes _____ No _____ (52)

If `No', grade is 1.

If `Yes', proceed to next question.

Do you get short of breath walking with other people at an ordinary pace on the level? Yes _____ No _____ (53)

If `No', grade is 2.

If `Yes', proceed to next question.

Do you have to stop for breath when walking at your own pace on the level? Yes _____ No _____ (54)

If `No', grade is 3.

If `Yes', proceed to next question.

Are you short of breath on washing or dressing? Yes _____ No _____ (55)

If `No', grade is 4.

If `Yes' grade is 5.

Dyspnea Grd. _____ (56)

ON MONDAYS

Are you ever troubled by shortness of breath, when hurrying on the level or walking up a slight hill? Yes _____ No _____ (57)

If `No', grade is 1.

If `Yes', proceed to next question.

Do you get short of breath walking with other people at ordinary pace on the level? Yes _____ No _____ (58)

If `No', grade is 2.

If `Yes', proceed to next question.

Do you have to stop for breath when walking at your own pace on level ground? Yes _____ No _____ (59)

If `No', grade is 3.

If `Yes', proceed to next question.

Are you short of breath on washing or dressing? Yes _____ No _____ (60)

If `No', grade is 4.

If `Yes', grade is 5. B. Grd. _____ (61)

G. OTHER ILLNESSES AND ALLERGY HISTORY

Do you have a heart condition for which you are under a doctor's care?

Yes _____ No _____ (62)

Have you ever had asthma? Yes _____ No _____ (63)

If `Yes', did it begin: (1) _____ Before age 30

(2) _____ After age 30

If `Yes' before 30 did you have asthma before ever going to work in a textile mill? Yes _____ No _____ (64)

Have you ever had hay fever or other allergies (other than above)? Yes _____ No _____ (65)

H. TOBACCO SMOKING*

Do you smoke?

Record `Yes', if regular smoker up to one month ago (Cigarettes, cigar or pipe) Yes _____ No _____ (66)

If `No' to (63)

Have you ever smoked? (Cigarettes, cigars, pipe. Record `No' if subject has never smoked as much as one cigarette a day, or 1 oz of tobacco a month, for as long as one year.) Yes _____ No _____ (67)

If `Yes' to (63) or (64), what have you smoked and for how many years?

(Write in specific number of years in the appropriate square)

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	
Years	<5	5-9	10-14	15-19	20-24	25-29	30-34	35-39	>40	
Cigarettes										(68)
Pipe										(69)
Cigars										(70)

If cigarettes, how many packs per day? (Write in number of cigarettes)

(1) _____ Less than 1/2 pack (71)

(2) _____ 1/2 pack, but less than 1 pack

(3) _____ 1 pack, but less than 1 ½ packs

(4) _____ 1 1/2 packs or more

Number of years _____ (72, 73)

If an ex-smoker (cigarettes, cigar or pipe), how long since you stopped? (Write in number of years) _____ (74)

(1) _____ 0-1 year

(2) _____ 1-4 years

(3) _____ 5-9 years

(4) _____ 10+ years

* Have you changed your smoking habits since last interview? If yes, specify what changes.

I. OCCUPATIONAL HISTORY**

Have you ever worked in:

A foundry? (As long as one year) Yes _____ No _____ (75)

Stone or mineral mining, quarry or processing? (As long as one year) Yes _____ No _____ (76)

Asbestos milling or processing? Yes _____ No _____ (77)

Other dusts, fumes or smoke? Yes _____ No _____ (78)

If yes, specify.

Type of exposure _____

Length of exposure _____

** Ask only on first interview.

At what age did you first go to work in a textile mill?

(Write in specific age in appropriate square)

(1)	(2)	(3)	(4)	(5)	(6)
<20	20-24	25-29	30-34	35-39	40+

When you first worked in a textile mill, did you work with:

(1) _____ Cotton or cotton blend (79)

(2) _____ Synthetic or wool (80)

APPENDIX B-II -- RESPIRATORY QUESTIONNAIRE FOR NON-TEXTILE WORKERS FOR THE COTTON INDUSTRY

Respiratory Questionnaire for Non-Textile Workers for the Cotton Industry

Identification No. Interviewer Code

Location Date of Interview

A. IDENTIFICATION

1. NAME (Last) (First) (Middle Initial)

2. CURRENT ADDRESS (Number, Street, or Rural Route, City or Town, County, State, Zip Code)

3. PHONE NUMBER AREA CODE NO.

(__ __ __) ___ ___ ___ - ___ ___ ___ ___

4. BIRTHDATE (Mo., Day, Yr.)

5. SEX

1. _____ Male 2. _____ Female

6. ETHNIC GROUP OR ANCESTRY (Check all that apply)

1. ____ White
2. ____ Black or African American
3. ____ Asian

4. ____ Hispanic or Latino
5. ____ American Indian or Alaska Native
6. ____ Native Hawaiian or Other Pacific Islander

7. STANDING HEIGHT

_____ (in)

8. WEIGHT (lbs)

_____

9. WORK SHIFT

1st _____ 2nd _____ 3rd _____

10. PRESENT WORK AREA

Please indicate primary assigned work area and percent of time spent at that site. If at other locations, please indicate and note percent of time for each.

PRIMARY WORK AREA	
SPECIFIC JOB	

11. APPROPRIATE INDUSTRY

1. _____ Garnetting
2. _____ Cottonseed Oil Mill
3. _____ Cotton Warehouse
4. _____ Utilization
5. _____ Cotton Classification
6. _____ Cotton Ginning

B. OCCUPATIONAL HISTORY TABLE

Complete the following table showing the entire work history of the individual from present to initial employment. Sporadic, part-time periods of employment, each of no significant duration, should be grouped if possible.

INDUSTRY AND LOCATION	TENURE OF EMPLOYMENT		SPECIFIC OCCUPATION	AVERAGE NO. DAYS WORKED PER WEEK	HAZARDOUS HEALTH EXPOSURE ASSOCIATED WITH WORK		
	FROM (year)	TO (year)			YES	NO	IF YES, DESCRIBE

C. SYMPTOMS

Use actual wording of each question. Put X in appropriate square after each question. When in doubt record "No.".

COUGH

1. Do you usually cough first thing in the morning? (on getting up)* (Count a cough with first smoke or on "first going out of doors". Exclude clearing throat or a single cough.) 1._____Yes 2._____No

2. Do you usually cough during the day or at night? (Ignore an occasional cough.) 1. ____ Yes 2. ____ No

If YES to either 1 or 2:

3. Do you cough like this on days for as much as three months a year?	1. ____ Yes 2. ____ No 3. ____ NA
4. Do you cough on any particular day of the week?	1. ____ Yes 2. _____ No

If YES:

5. Which day?	Mon. Tue. Wed. Thur. Fri. Sat. Sun. _____

PHLEGM

6. Do you usually bring up any phlegm from your chest first thing in the morning? (on getting up)* (Count phlegm with the first smoke or on "first going out of doors." Exclude phlegm from the nose. Count swallowed phlegm.	1. ____ Yes 2. ____ No
7. Do you usually bring up any phlegm from your chest during the day or at night? (Accept twice or more.)	1. ____ Yes 2. ____ No

If YES to either question 6 or 7:

8. Do you bring up phlegm like this on most days for as much as three months each year?	1. ____ Yes 2. ____ No

If YES to question 3 or 8:

9. How long have you had this phlegm? (cough) (Write in number of years)	(1) ____ 2 years or less (2) ____ More than 2 years - 9 years (3) ____ 10-19 years (4) ____ 20+ years

* These words are for subjects who work at night.

CHEST ILLNESS

10. In the past three years, have you had a period of (increased) cough and phlegm lasting for 3 weeks or more?	(1) ____ No (2) ____ Yes, only one period (3) ____ Yes, two or more periods

For subjects who usually have phlegm:

11. During the past 3 years have you had any chest illness which has kept you off work, indoors at home or in bed? (For as long as one week, flu?)	1. ____ Yes 2. ____ No

If YES to 11:

12. Did you bring up (more) phlegm than usual in any of these illnesses?	1. ____ Yes 2. ____ No
13. Only one such illness with increased phlegm?	1. ____ Yes 2. ____ No

If YES to 12: During the past three years have you had:

14. More than one such illness:	1. ____ Yes 2. ____ No

Br. Grade _____

TIGHTNESS

15. Does your chest ever feel tight or your breathing become difficult? 1. ____ Yes 2. ____ No

16. Is your chest tight or your breathing difficult on any particular day of the week? (after a week or 10 days away from the mill) 1. ____ Yes 2. ____ No

17. If `Yes': Which day?

(3) Mon. ^ (4) Tues. (5) Wed. (6) Thur. (7) Fri. (8) Sat. Sun.

(1) / Sometimes \ (2) Always

18. If YES Monday: At what time on Monday does your chest feel tight or your breathing difficult?

_____ Before entering mill

_____ After entering mill

(Ask only if NO to Question (15))

19. In the past, has your chest ever been tight or your breathing difficult on any particular day of the week? 1. ____ Yes 2. ____ No

20. If `Yes': Which day?

(3) Mon. ^ (4) Tues. (5) Wed. (6) Thur. (7) Fri. (8) Sat. Sun.

(1) / Sometimes \ (2) Always

BREATHLESSNESS

21. If disabled from walking by any condition other than heart or lung disease put "X" in the space and leave questions (22-30) unasked. _____

22. Are you ever troubled by shortness of breath, when hurrying on the level or

walking up a slight hill? 1. ____ Yes 2. ____ No

If NO, grade is 1. If YES, proceed to next question.

23. Do you get short of breath walking with other people at an ordinary pace on the level? 1. ____ Yes 2. ____ No

If NO, grade is 2. If YES, proceed to next question.

24. Do you have to stop for breath when walking at your own pace on the level? 1. ____ Yes 2. ____ No

If NO, grade is 3. If YES, proceed to next question.

25. Are you short of breath on washing or dressing? 1. ____ Yes 2. ____ No

If NO, grade is 4, If YES, grade is 5.

26. Dyspnea Grd. _____

ON MONDAYS:

27. Are you ever troubled by shortness of breath, when hurrying on the level or walking up a slight hill? 1. ____ Yes 2. ____ No

If NO, grade is 1, If YES, proceed to next question.

28. Do you get short of breath walking with other people at an ordinary pace on the level? 1. ____ Yes 2. ____ No

If NO, grade is 2, If YES, proceed to next

question.

29. Do you have to stop for breath when walking at your own pace on the level? 1. ____ Yes 2. ____ No

If NO, grade is 3, If YES, proceed to next question.

30. Are you short of breath on washing or dressing? 1. ____ Yes 2. ____ No

If NO, grade is 4, If YES, grade is 5.

B. Grd. _____

OTHER ILLNESSES AND ALLERGY HISTORY

32. Do you have a heart condition for which you are under a doctor's care? 1. ____ Yes 2. ____ No

33. Have you ever had asthma? 1. ____ Yes 2. ____ No

If yes, did it begin:

(1) Before age 30 _____

(2) After age 30 _____

34. If yes before 30: did you have asthma before ever going to work in a textile mill? 1. ____ Yes 2. ____ No

35. Have you ever had hay fever or other allergies (other than above)? 1. ____ Yes 2. ____ No

TOBACCO SMOKING

36. Do you smoke?
Record Yes if regular smoker up to one month ago. (Cigarettes, cigar or pipe) 1. ____ Yes 2. ____ No

If NO to (33).

37. Have you ever smoked? (Cigarettes, cigars, pipe. Record NO if subject has never smoked as much as one cigarette a day, or 1 oz. of tobacco a month, for as long as one year.) 1. ____ Yes 2. ____ No

If YES to (33) or (34); what have you smoked for how many years? (Write in specific number of years in the appropriate square)

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	
Years	<5	5-9	10-14	15-19	20-24	25-29	30-34	35-39	>40	
Cigarettes										(38)
Pipe										(39)
Cigars										(40)

41. If cigarettes, how many packs per day? Write in number of cigarettes _____

_____ Less than 1/2 pack

_____ 1/2 pack, but less than 1 pack

_____ 1 pack, but less than 1 1/2 packs

_____ 1-1/2 packs or more

42. Number of pack years: _____

43. If an ex-smoker (Cigarettes, cigar or pipe), how long since you stopped? (Write in number of years.) _____

_____ 0-1 year
_____ 1-4 years
_____ 5-9 years
_____ 10+ years

OCCUPATIONAL HISTORY

Have you ever worked in:

44. A foundry? 1. ____ Yes 2. ____ No
(As long as one year)

45. Stone or mineral mining, quarrying or processing? 1. ____ Yes 2. ____ No
(As long as one year)

46. Asbestos milling or processing? 1. ____ Yes 2. ____ No
(Ever)

47. Cotton or cotton blend mill? 1. ____ Yes 2. ____ No
(For controls only)

48. Other dusts, fumes or smoke? 1. ____ Yes 2. ____ No
If yes, specify.

Type of exposure _____

Length of exposure _____

APPENDIX B-III -- ABBREVIATED RESPIRATORY QUESTIONNAIRE

ABBREVIATED RESPIRATORY QUESTIONNAIRE

A. IDENTIFICATION DATA

PLANT _____

DAY MONTH YEAR

(figures) (last 2 digits)

NAME _____ DATE OF INTERVIEW _____

(Surname)

_____ DATE OF BIRTH _____

(First Names)

M F

ADDRESS _____ AGE ____ (8, 9) SEX _____(10)

RACE (11) (Check all that apply)

1. White ___
2. Black or African American ___
3. Asian ___
4. Hispanic or Latino ___
5. American Indian or Alaska Native ___
6. Native Hawaiian or Other Pacific Islander ___

INTERVIEWER: 1 2 3 4 5 6 7 8 (12)

WORK SHIFT: 1st _____ 2nd _____ 3rd _____ (13)

STANDING HEIGHT _____ (14, 15)

WEIGHT _____ (16, 18)

PRESENT WORK AREA

If working in more than one specified work area, X area where most of the work shift is spent. If "other," but spending 25% of the work shift in one of the specified work areas, classify in that work area. If carding department employee, check area within that department where most of the work shift is spent (if in doubt, check "throughout"). For work areas such as spinning and weaving where many work rooms may be involved, be sure to check to specific work room to which the employee is assigned - if he works in more than one work room within a department classify as 7 (all) for that department.

	Work-room Number	(19) Open	(20) Pick	Area	(21) Card #1	(22) #2	(23) Spin	(24) Wind	(25) Twist
AT RISK (cotton & Cotton blend)	1			Cards					
	2			Draw					
	3			Comb					
	4			Thru Out					
	5								
	6								
	7 (all)								
Control (synthetic & wool)	8								
Ex-Worker	9								

(cotton)									

Continued –

	Work-Room Number	(26) Spool	(27) Warp	(28) Slash	(29) Weave	(30) Other
AT RISK (cotton & cotton blend)	1					
	2					
	3					
	4					
	5					
	6					
	7 (all)					
Control (synthetic & wool)	8					
Ex-Worker (cotton)	9					

Use actual wording of each question. Put X in appropriate square after each question. When in doubt record `No'. When no square, circle appropriate answer.

B. COUGH

(on getting up)
Do you usually cough first thing in the morning? _____

Yes _____ No _____ (31)

(Count a cough with first smoke or on "first going out of doors." Exclude clearing throat or a single cough.)

Do you usually cough during the day or at night? Yes _____ No _____ (32)

(Ignore an occasional cough.)

If `Yes' to either question (31-32):

Do you cough like this on most days for as much as three months a year? Yes _____ No _____ (33)

Do you cough on any particular day of the week? Yes _____ No _____ (34)

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	
If 'Yes': Which day?	Mon	Tues	Wed	Thur	Fri	Sat	Sun	(35)

C. PHLEGM or alternative word to suit local custom.

(on getting up)

Do you usually bring up any phlegm from your chest first thing in the morning? (Count phlegm with the first smoke or on "first going out of doors." Exclude phlegm from the nose. Count swallowed phlegm.) Yes _____ No _____ (36)

Do you usually bring up any phlegm from your chest during the day or at night? (Accept twice or more.) Yes _____ No _____ (37)

If `Yes' to question (36) or (37):

Do you bring up any phlegm like this on most days for as much as three months each year? Yes _____ No _____ (38)

If `Yes' to question (33) or (38):

(cough)

How long have you had this phlegm?

(Write in number of years)

(1) ____ 2 years or less

(2) ____ More than 2 years-9 years

(3) ____ 10-19 years

(4) ____ 20+ years

* These words are for subjects who work at night

D. TIGHTNESS

Does your chest ever feel tight or your breathing become difficult?

Yes _____ No _____ (39)

Is your chest tight or your breathing difficult on any particular day of the week? (after a week or 10 days from the mill)

Yes _____ No _____ (40)

If `Yes': Which day? (3) (4) (5) (6) (7) (8)

Mon. ^ Tues. Wed. Thur. Fri. Sat. Sun. (41)

(1) / \ (2)

Sometimes Always

If `Yes' Monday At what time on Monday does your chest feel tight or your breathing difficult?

(1) ___ Before entering the mill (42)

(2) ___ After entering the mill

(Ask only if NO to Question (45))

In the past, has your chest ever been tight or your breathing difficult on any particular day of the week?

Yes _____ No _____ (43)

If `Yes': Which day?

(3) (4) (5) (6) (7) (8)

Mon. ^ Tues. Wed. Thur. Fri. Sat. Sun. (44)

(1) / \ (2)

Sometimes Always

E. TOBACCO SMOKING

* Have you changed your smoking habits since last interview?

If yes, specify what changes.

BILLING CODE 4510–26–C

Appendix C to § 1910.1043 [Reserved]

Appendix D to § 1910.1043—Pulmonary Function Standards for Cotton Dust Standard

The spirometric measurements of pulmonary function shall conform to the following minimum standards, and these standards are not intended to preclude additional testing or alternate methods which can be determined to be superior.

I. Apparatus

a. The instrument shall be accurate to within ±50 milliliters or within ±3 percent of reading, whichever is greater.

b. 1. Instruments purchased on or before May 14, 2020 should be capable of measuring vital capacity from 0 to 7 liters BTPS

2. Instruments purchased after May 14, 2020 should be capable of measuring vital capacity from 0 to 8 liters BTPS.

c. The instrument shall have a low inertia and offer low resistance to airflow such that the resistance to airflow at 12 liters per second must be less than 1.5 cm H_2 O/(liter/sec).

d. The zero time point for the purpose of timing the FEV_1 shall be determined by extrapolating the steepest portion of the volume time curve back to the maximal inspiration volume (1, 2, 3, 4) or by an equivalent method.

e. 1. Instruments purchased on or before May 14, 2020 that incorporate measurements of airflow to determine volume shall conform to the same volume accuracy stated in paragraph (a) of this section I when presented with flow rates from at least 0 to 12 liters per second.

2. Instruments purchased after May 14, 2020 that incorporate measurements of airflow to determine volume shall conform to the same volume accuracy stated in paragraph (a) of this section I when presented with flow rates from at least 0 to 14 liters per second.

f. The instrument or user of the instrument must have a means of correcting volumes to body temperature saturated with water vapor (BTPS) under conditions of varying ambient spirometer temperatures and barometric pressures.

g. 1. Instruments purchased on or before May 14, 2020 shall provide a tracing or display of either flow versus volume or volume versus time during the entire forced expiration. A tracing or display is necessary to determine whether the patient has performed the test properly. The tracing must be stored and available for recall and must be of sufficient size that hand measurements may be made within the volume accuracy requirements of paragraph (a) of this section I. If a paper record is made it must have a paper speed of at least 2 cm/sec and a volume sensitivity of at least 10.0 mm of chart per liter of volume.

2. Instruments purchased after May 14, 2020 shall provide during testing a paper tracing or real-time display of flow versus volume and volume versus time for the entire forced expiration. Such a tracing or display is necessary to determine whether the worker has performed the test properly. Flow-volume and volume-time curves must be stored and available for recall. Real-time displays shall have a volume scale of at least 5 mm/L, a time scale of at least 10 mm/s, and a flow scale of at least 2.5 mm/L/s, when both flow-volume and volume-time displays are visible. If hand measurements will be made, paper tracings must be of sufficient size to allow those measurements to be made within the volume accuracy requirements of paragraph (a) of this section I. If a paper record is made it must have a paper speed of at least 2 cm/sec and a volume sensitivity of at least 10.0 mm of chart per liter of volume.

h. 1. Instruments purchased on or before May 14, 2020 shall be capable of accumulating volume for a minimum of 10 seconds and shall not stop accumulating volume before (i) the volume change for a 0.5-second interval is less than 25 milliliters, or (ii) the flow is less than 50 milliliters per second for a 0.5 second interval.

2. Instruments purchased after May 14, 2020 shall be capable of accumulating volume for a minimum of 15 seconds and shall not stop accumulating volume before the volume change for a 1-second interval is less than 25 milliliters.

i. The forced vital capacity (FVC) and forced expiratory volume in 1 second (FEV_1) measurements shall comply with the accuracy requirements stated in paragraph (a) of this section. That is, they should be accurately measured to within ±50 ml or within ±3 percent of reading, whichever is greater.

j. 1. Instruments purchased on or before May 14, 2020 must be capable of being calibrated in the field with respect to the FEV_1 and FVC. This calibration of the FEV_1 and FVC may be either directly or indirectly through volume and time base measurements. The volume calibration source should provide a volume displacement of at least 2 liters and should be accurate to within + or − 30 milliliters.

2. Instruments purchased after May 14, 2020 must be capable of having its calibration checked in the field and be recalibrated, if necessary, if the spirometer requires the technician to do so. The volume-calibration syringe shall provide a volume displacement of at least 3 liters and shall be accurate to within ± 0.5 percent of 3 liters (15 milliliters).

II. Technique for Measurement of Forced Vital Capacity Maneuver

a. Use of a nose clip is recommended but not required. The procedures shall be explained in simple terms to the worker who shall be instructed to loosen any tight clothing and stand in front of the apparatus. The worker may sit, but care should be taken on repeat testing that the same position be used and, if possible, the same spirometer. Particular attention shall be given to ensure that the chin is slightly elevated with the neck slightly extended. The worker shall be instructed to make a full inspiration from a normal breathing pattern and then blow into the apparatus, without interruption, as hard, fast, and completely as possible. At least three and no more than eight forced expirations shall be carried out. During the maneuvers, the worker shall be observed for compliance with instruction. The expirations shall be checked visually for technical acceptability and repeatability from flow-volume or volume-time tracings or displays. The following efforts shall be judged technically unacceptable when the worker:

1. Has not reached full inspiration preceding the forced expiration,

2. Has not used maximal effort during the entire forced expiration,

3. Has not tried to exhale continuously for at least 6 seconds and the volume-time curve shows no change in volume (<0.025 L) for at least one second,

4. Has coughed in the first second or closed the glottis,

5. Has an obstructed mouthpiece or a leak around the mouthpiece (obstruction due to tongue being placed in front of mouthpiece, false teeth falling in front of mouthpiece, etc.),

6. Has an unsatisfactory start of expiration, one characterized by excessive hesitation (or false starts), and, therefore, not allowing back extrapolation of time 0 (extrapolated volume on the volume-time tracing must be less than 150 milliliters or 5 percent of the FVC, whichever is greater.), and

7. Has an excessive variability between the acceptable curves. The difference between the two largest FVCs from the satisfactory tracings shall not exceed 150 milliliters and the difference between the two largest FEV_1s of the satisfactory tracings shall not exceed 150 milliliters.

b. Calibration checks of the volume accuracy of the instrument for recording FVC and FEV_1 shall be performed daily or more frequently if specified by the spirometer manufacturer, using a 3-liter syringe. Calibration checks to ensure that the spirometer is recording 3 liters of injected air to within ±3.5 percent, or 2.90 to 3.10 liters, shall be conducted. Calibration checks of flow-type spirometers shall include injection of 3 liters air over a range of speeds, with injection times of 0.5 second, 3 seconds, and 6 or more seconds. Checks of volume-type spirometers shall include a single calibration check and a check to verify that the spirometer is not leaking more than 30 milliliters/minute air.

III. Interpretation of Spirogram

a. The first step in evaluating a spirogram should be to determine whether or not the worker has performed the test properly or as described in section II of this appendix. From the three satisfactory tracings, the forced vital capacity (FVC) and forced expiratory volume in 1 second (FEV_1) shall be measured and recorded. The largest observed FVC and largest observed FEV_1 shall be used in the analysis regardless of the curve(s) on which they occur.

b. [Reserved]

IV. Qualifications of Personnel Administering the Test

Technicians who perform pulmonary function testing should have the basic knowledge required to produce meaningful results. Training consisting of approximately 16 hours of formal instruction should cover the following areas.

a. Basic physiology of the forced vital-capacity maneuver and the determinants of airflow limitation, with emphasis on the relation to repeatability of results.

b. Instrumentation requirements, including calibration check procedures, sources of error, and their correction.

c. Performance of the testing including worker coaching, recognition of improperly performed maneuvers and corrective actions.

d. Data quality with emphasis on repeatability.

e. Actual use of the equipment under supervised conditions.

f. Measurement of tracings and calculations of results.

■ 11. Revise paragraphs (n)(2)(iii) and (n)(3)(i) and (ii) of § 1910.1045 to read as follows:

§ 1910.1045 Acrylonitrile.

* * * * *

(n) * * *

(2) * * *

(iii) A 14- by 17-inch or other reasonably-sized standard film or digital posterior-anterior chest X-ray; and

* * * * *

(3) * * *

(i) The employer shall provide the examinations specified in paragraphs (n)(2)(i), (ii), and (iv) of this section at least annually for all employees specified in paragraph (n)(1) of this section.

(ii) If an employee has not had the examination specified in paragraphs (n)(2)(i), (ii), and (iv) of this section within 6 months preceding termination of employment, the employer shall make such examination available to the employee prior to such termination.

* * * * *

■ 12. Revise appendix D of § 1910.1048 to read as follows:

§ 1910.1048 Formaldehyde.

* * * * *

BILLING CODE 4510–26–P

APPENDIX D TO § 1910.1048—NONMANDATORY MEDICAL DISEASE QUESTIONNAIRE

A. Identification

Plant Name: _____

Date: _____

Employee Name: _____

Job Title: _____

Birthdate: _____

Age: _____

Sex: _____

Height: _____

Weight: _____

B. Medical History

1. Have you ever been in the hospital as a patient?

   Yes__ No__

   If yes, what kind of problem were you having? _____

   _____

2. Have you ever had any kind of operation?

   Yes__ No__

   If yes, what kind? _____

   _____

3. Do you take any kind of medicine regularly?

   Yes__ No__

   If yes, what kind? _____

   _____

4. Are you allergic to any drugs, foods, or chemicals?

   Yes__ No__

   If yes, what kind of allergy is it? _____

   _____

   What causes the allergy? _____

   _____

5. Have you ever been told that you have asthma, hayfever, or sinusitis?

   Yes__ No__

6. Have you ever been told that you have emphysema, bronchitis, or any other respiratory problems?

   Yes__ No__

7. Have you ever been told you had hepatitis?

   Yes__ No__

8. Have you ever been told that you had cirrhosis?

   Yes__ No__

9. Have you ever been told that you had cancer?

   Yes__ No__

10. Have you ever had arthritis or joint pain?

    Yes__ No__

11. Have you ever been told that you had high blood pressure?

    Yes__ No__

12. Have you ever had a heart attack or heart trouble?

    Yes__ No__

B-1. Medical History Update

1. Have you been in the hospital as a patient any time within the past year?

   Yes__ No__

   If so, for what condition? _____

   _____

2. Have you been under the care of a physician during the past year?

   Yes__ No__

   If so, for what condition?_____

   _____

3. Is there any change in your breathing since last year?

   Yes__ No__

   Better? _____

   Worse? _____

   No change?_____

   If change, do you know why?_____

   _____

4. Is your general health different this year from last year?

   Yes__ No__

   If different, in what way?_____

   _____

5. Have you in the past year or are you now taking any medication on a regular basis?

   Yes__ No__

   Name Rx_____

   Condition being treated _____

C. Occupational History

1. How long have you worked for your present employer?

   _____

2. What jobs have you held with this employer? Include job title and length of time in each job _____

   _____

   _____

   _____

3. In each of these jobs, how many hours a day were you exposed to chemicals?

   _____

4. What chemicals have you worked with most of the time?

   _____

5. Have you ever noticed any type of skin rash you feel was related to your work?

   Yes__ No__

6. Have you ever noticed that any kind of chemical makes you cough?

   Yes__ No__

   Wheeze?

   Yes__ No__

   Become short of breath or cause your chest to become tight?

   Yes__ No__

7. Are you exposed to any dust or chemicals at home?

   Yes__ No__

   If yes, explain: _____

   _____

8. In other jobs, have you ever had exposure to:

   Wood dust?

   Yes__ No__

   Nickel or chromium?

   Yes__ No__

   Silica (foundry, sand blasting)?

   Yes__ No__

   Arsenic or asbestos?

   Yes__ No__

   Organic solvents?

   Yes__ No__

   Urethane foams?

   Yes__ No__

C-1. Occupational History Update

1. Are you working on the same job this year as you were last year?

   Yes__ No__

   If not, how has your job changed? _____

   _____

2. What chemicals are you exposed to on your job?

_____

3. How many hours a day are you exposed to chemicals?

_____

4. Have you noticed any skin rash within the past year you feel was related to your work?

Yes__ No__

If so, explain circumstances: _____

_____

5. Have you noticed that any chemical makes you cough, be short of breath, or wheeze?

Yes__ No__

If so, can you identify it? _____

_____

D. Miscellaneous

1. Do you smoke?

Yes__ No__

If so, how much and for how long? _____

_____

Pipe_____

Cigars_____

Cigarettes_____

2. Do you drink alcohol in any form?

Yes__ No__

If so, how much, how long, and how often? _____

_____

3. Do you wear glasses or contact lenses?

Yes__ No__

4. Do you get any physical exercise other than that required to do your job?

Yes__ No__

If so, explain: _____

_____

5. Do you have any hobbies or "side jobs" that require you to use chemicals, such as furniture stripping, sand blasting, insulation or manufacture of urethane foam, furniture, etc.?

   Yes__ No__

   If so, please describe, giving type of business or hobby, chemicals used and length of exposures.

E. Symptoms Questionnaire

1. Do you ever have any shortness of breath?

   Yes__ No__

   If yes, do you have to rest after climbing several flights of stairs?

   Yes__ No__

   If yes, if you walk on the level with people your own age, do you walk slower than they do?

   Yes__ No__

   If yes, if you walk slower than a normal pace, do you have to limit the distance that you walk?

   Yes__ No__

   If yes, do you have to stop and rest while bathing or dressing?

   Yes__ No__

2. Do you cough as much as three months out of the year?

   Yes__ No__

   If yes, have you had this cough for more than two years?

   Yes__ No__

   If yes, do you ever cough anything up from chest?

   Yes__ No__

3. Do you ever have a feeling of smothering, unable to take a deep breath, or tightness in your chest?

   Yes__ No__

   If yes, do you notice that this on any particular day of the week?

   Yes__ No__

   If yes, what day or the week?

   Yes__ No__

   If yes, do you notice that this occurs at any particular place?

   Yes__ No__

   If yes, do you notice that this is worse after you have returned to work after being off for several days?

   Yes__ No__

4. Have you ever noticed any wheezing in your chest?

   Yes__ No__

   If yes, is this only with colds or other infections?

   Yes__ No__

   Is this caused by exposure to any kind of dust or other material?

   Yes__ No__

   If yes, what kind? _____

5. Have you noticed any burning, tearing, or redness of your eyes when you are at work?

   Yes__ No__

   If so, explain circumstances: _____

   _____

6. Have you noticed any sore or burning throat or itchy or burning nose when you are at work?

   Yes__ No__

   If so, explain circumstances: _____

   _____

7. Have you noticed any stuffiness or dryness of your nose?

   Yes__ No__

8. Do you ever have swelling of the eyelids or face?

   Yes__ No__

9. Have you ever been jaundiced?

   Yes__ No__

   If yes, was this accompanied by any pain?

   Yes__ No__

10. Have you ever had a tendency to bruise easily or bleed excessively?

    Yes__ No__

11. Do you have frequent headaches that are not relieved by aspirin or Tylenol?

    Yes__ No__

    If yes, do they occur at any particular time of the day or week?

    Yes__ No__

    If yes, when do they occur? _____

    _____

12. Do you have frequent episodes of nervousness or irritability?

    Yes__ No__

13. Do you tend to have trouble concentrating or remembering?

    Yes__ No__

14. Do you ever feel dizzy, light-headed, excessively drowsy or like you have been drugged?

    Yes__ No__

15. Does your vision ever become blurred?

    Yes__ No__

16. Do you have numbness or tingling of the hands or feet or other parts of your body?

    Yes__ No__

17. Have you ever had chronic weakness or fatigue?

    Yes__ No__

18. Have you ever had any swelling of your feet or ankles to the point where you could not wear your shoes?

    Yes__ No__

19. Are you bothered by heartburn or indigestion?

Yes__ No__

20. Do you ever have itching, dryness, or peeling and scaling of the hands?

Yes__ No__

21. Do you ever have a burning sensation in the hands, or reddening of the skin?

Yes__ No__

22. Do you ever have cracking or bleeding of the skin on your hands?

Yes__ No__

23. Are you under a physician's care?

Yes__ No__

If yes, for what are you being treated? _____

_____

24. Do you have any physical complaints today?

Yes__ No__

If yes, explain? _____

_____

25. Do you have other health conditions not covered by these questions?

Yes__ No__

If yes, explain: _____

_____

■ 13. Revise appendix F of § 1910.1051 to read as follows:

§ 1910.1051 1,3-Butadiene.

* * * * *

APPENDIX F TO § 1910.1051—MEDICAL QUESTIONNAIRES (NON-MANDATORY)

1,3-Butadiene (BD) Initial Health Questionnaire

DIRECTIONS:

You have been asked to answer the questions on this form because you work with BD (butadiene). These questions are about your work, medical history, and health concerns. Please do your best to answer all of the questions. If you need help, please tell the doctor or health care professional who reviews this form.

This form is a confidential medical record. Only information directly related to your health and safety on the job may be given to your employer. Personal health information will not be given to anyone without your consent.

Date: _____

Name: _____ _____ ____

Last First MI

Job Title: _____

Company's Name: _____

Supervisor's Name: _____ Supervisor's Phone No.: ( ) ____-_____

Work History

1. Please list all jobs you have had in the past, starting with the job you have now and m oving back in time to your first job. (For more space, write on the back of this page.)

Main Job Duty	Years	Company Name City, State	Chemicals
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			

2. Please describe what you do during a typical work day. Be sure to tell about you work with BD

_____

_____

3. Please check any of these chemicals that you work with now or have worked with in the past:

benzene ____

glues ____

toluene ____

inks, dyes ____

other solvents, grease cutters ____

insecticides (like DDT, lindane, etc.) ____

paints, varnishes, thinners, strippers ____

dusts ____

carbon tetrachloride ("carbon tet") ____

arsine ____

carbon disulfide ____

lead ____

cement ____

petroleum products ____

nitrites ____

4. Please check the protective clothing or equipment you use at the job you have now:

gloves ____

coveralls ____

respirator ____

dust mask ____

safety glasses, goggles ____

Please circle your answer of yes or no.

5. Does your protective clothing or equipment fit you properly?

yes no

6. Have you ever made changes in your protective clothing or equipment to make it fit better?

yes no

7. Have you been exposed to BD when you were not wearing protective clothing or equipment?

yes no

8. Where do you eat, drink and/or smoke when you are at work?

(Please check all that apply.)

Cafeteria/restaurant/snack bar ____

Break room/employee lounge ____

Smoking lounge ____

At my work station ____

Please circle your answer.

9. Have you been exposed to radiation (like x-rays or nuclear material) at the job you have now or at past jobs?

yes no

10. Do you have any hobbies that expose you to dusts or chemicals (including paints, glues, etc.)?

yes no

11. Do you have any second or side jobs?

yes no

If yes, what are your duties there? _____

_____

_____

_____

12. Were you in the military?

yes no

If yes, what did you do in the military? _____

_____

_____

_____

Family Health History

1. In the FAMILY MEMBER column, across from the disease name, write which family member, if any, had the disease.

Disease	Family Member
Cancer	
Lymphoma	
Sickle Cell Disease or Trait	
Immune Disease	
Leukemia	
Anemia	

2. Please fill in the following information about family health:

RELATIVE	ALIVE?	AGE AT DEATH?	CAUSE OF DEATH?
Father			
Mother			
Brother/Sister			
Brother/Sister			
Brother/Sister			

PERSONAL HEALTH HISTORY

Birth Date ____/____/_____ Age _____ Sex ___ Height _____ Weight _____

Please circle your answer.

1. Do you smoke any tobacco products?

yes no

2. Have you ever had any kind of surgery or operation?

yes no

If yes, what type of surgery: _____

_____

_____

3. Have you ever been in the hospital for any other reasons?

yes no

If yes, please describe the reason: _____

_____

_____

4. Do you have any on-going or current medical problems or conditions?

yes no

If yes, please describe: _____

_____

5. Do you now have or have you ever had any of the following? Please check all that apply to you.

unexplained fever _____

anemia ("low blood") _____

HIV/AIDS _____

weakness _____

sickle cell _____

miscarriage _____

skin rash _____

bloody stools _____

leukemia/lymphoma _____

neck mass/swelling _____

wheezing _____

yellowing of skin _____

bruising easily _____

lupus _____

weight loss _____

kidney problems _____

enlarged lymph nodes _____

liver disease _____

cancer _____

infertility _____

drinking problems _____

thyroid problems _____

night sweats _____

chest pain _____

still birth _____

eye redness _____

lumps you can feel _____

child with birth defect _____

autoimmune disease _____

overly tired _____

lung problems _____

rheumatoid arthritis _____

mononucleosis("mono") _____

nagging cough _____

Please circle your answer.

6. Do you have any symptoms or health problems that you think may be related to your work with BD?

yes no

If yes, please describe: _____

_____

7. Have any of your co-workers had similar symptoms or problems?

yes no don't know

If yes, please describe: _____

_____

8. Do you notice any irritation of your eyes, nose, throat, lungs or skin when working with BD?

yes no

9. Do you notice any blurred vision, coughing, drowsiness, nausea, or headache when working with BD?

yes no

10. Do you take any medications (including birth control or over-the-counter)?

yes no

If yes, please list: _____

_____

11. Are you allergic to any medication, food, or chemicals?

yes no

If yes, please list: _____

_____

12. Do you have any health conditions not covered by this questionnaire that you think are affected by your work with BD?

yes no

If yes, please explain: _____

_____

13. Did you understand all the questions?

yes no

_____

Signature

1,3-Butadiene (BD) Update Health Questionnaire

DIRECTIONS:

You have been asked to answer the questions on this form because you work with BD (butadiene). These questions ask about changes in your work, medical history, and health concerns since the last time you were evaluated. Please do your best to answer all of the questions. If you need help, please tell the doctor or health care professional who reviews this form.

This form is a confidential medical record. Only information directly related to your health and safety on the job may be given to your employer. Personal health information will not be given to anyone without your consent.

Date: _____

Name:_____

Last First MI

Job Title: _____

Company's Name: _____

Supervisor's Name: _____ Supervisor's Phone No.: ( ) _____-_____

Present Work History

1. Please describe any NEW duties that you have at your job:_____
_____
_____
_____
_____
_____

2. Please list any additional job titles you have:

_____ _____

_____ _____

_____ _____

Please circle your answer.

3. Are you exposed to any other chemicals in your work since the last time you were evaluated for exposure to BD?

yes no

If yes, please list what they are: _____

_____

4. Does your personal protective equipment and clothing fit you properly?

yes no

5. Have you made changes in this equipment or clothing to make it fit better?

yes no

6. Have you been exposed to BD when you were not wearing protective equipment or clothing?

   yes no

7. Are you exposed to any NEW chemicals at home or while working on hobbies?

   yes no

   If yes, please list what they are: _____

   _____

8. Since your last BD health evaluation, have you started working any new second or side jobs?

   yes no

   If yes, what are your duties there? _____

   _____

   _____

Personal Health History

1. What is your current weight? _____ pounds

2. Have you been diagnosed with any new medical conditions or illness since your last evaluation?

   yes no

If yes, please tell what they are: _____

_____

3. Since your last evaluation, have you been in the hospital for any illnesses, injuries, or surgery?

yes no

If yes, please describe: _____

_____

4. Do you have any of the following? Please place a check for all that apply to you.

unexplained fever	____	liver disease	____
anemia ("low blood")	____	cancer	____
HIV/AIDS	____	infertility	____
weakness	____	drinking problems	____
sickle cell	____	thyroid problems	____
miscarriage	____	night sweats	____
skin rash	____	still birth	____
bloody rash	____	eye redness	____
leukemia/lymphoma	____	lumps you can feel	____
neck mass/swelling	____	child with birth defect	____
wheezing	____	autoimmune disease	____
chest pain	____	overly tired	____
bruising easily	____	lung problems	____
lupus	____	rheumatoid arthritis	____
weight loss	____	mononucleosis "mono"	____
kidney problems	____	nagging cough	____
enlarged lymph nodes	____	yellowing of skin	____

Please circle your answer.

5. Do you have any symptoms or health problems that you think may be related to your work with BD?

yes no

If yes, please describe: _____

_____

6. Have any of your co-workers had similar symptoms or problems?

yes no don't know

If yes, please describe: _____

_____

7. Do you notice any irritation of your eyes, nose, throat, lungs, or skin when working with BD?

yes no

8. Do you notice any blurred vision, coughing, drowsiness, nausea, or headache when working with BD?

yes no

9. Have you been taking any NEW medications (including birth control or over-the-counter)?

yes no

If yes, please list:

_____ _____ _____

_____ _____ _____

10. Have you developed any NEW allergies to medications, foods, or chemicals?

yes no

If yes, please list:

_____ _____ _____

_____ _____ _____

11. Do you have any health conditions not covered by this questionnaire that you think are affected by your work with BD?

yes no

If yes, please explain: _____

_____

12. Did you understand all the questions?

yes no

Signature

BILLING CODE 4510–26–C

■ 14. Revise appendix B, section IV, of § 1910.1052 to read as follows:

§ 1910.1052 Methylene chloride.

* * * * *

Appendix B to § 1910.1052—Medical Surveillance for Methylene Chloride

* * * * *

IV. Surveillance and Preventive Considerations

As discussed in sections II and III of this appendix, MC is classified as a suspect or potential human carcinogen. It is a central nervous system (CNS) depressant and a skin, eye and respiratory tract irritant. At extremely high concentrations, MC has caused liver damage in animals. MC principally affects the CNS, where it acts as a narcotic. The observation of the symptoms characteristic of CNS depression, along with a physical examination, provides the best detection of early neurological disorders. Since exposure to MC also increases the carboxyhemoglobin level in the blood, ambient carbon monoxide levels would have an additive effect on that carboxyhemoglobin level. Based on such information, a periodic post-shift carboxyhemoglobin test as an index of the presence of carbon monoxide in the blood is recommended, but not required, for medical surveillance.

Based on the animal evidence and three epidemiologic studies previously mentioned, OSHA concludes that MC is a suspect human carcinogen. The medical surveillance program is designed to observe exposed workers on a regular basis. While the medical surveillance program cannot detect MC-induced cancer at a preneoplastic stage, OSHA anticipates that, as in the past, early detection and treatments of cancers leading to enhanced survival rates will continue to evolve.

A. Medical and Occupational History

The medical and occupational work history plays an important role in the initial evaluation of workers exposed to MC. It is therefore extremely important for the examining physician or other licensed health care professional to evaluate the MC-exposed worker carefully and completely and to focus the examination on MC's potentially associated health hazards. The medical evaluation must include an annual detailed work and medical history with special emphasis on cardiac history and neurological symptoms.

An important goal of the medical history is to elicit information from the worker regarding potential signs or symptoms associated with increased levels of carboxyhemoglobin due to the presence of carbon monoxide in the blood. Physicians or other licensed health care professionals should ensure that the smoking history of all MC exposed employees is known. Exposure to MC may cause a significant increase in carboxyhemoglobin level in all exposed persons. However, smokers as well as workers with anemia or heart disease and those concurrently exposed to carbon monoxide are at especially high risk of toxic effects because of an already reduced oxygen carrying capacity of the blood.

A comprehensive or interim medical and work history should also include occurrence of headache, dizziness, fatigue, chest pain, shortness of breath, pain in the limbs, and irritation of the skin and eyes.

In addition, it is important for the physician or other licensed health care professional to become familiar with the operating conditions in which exposure to MC is likely to occur. The physician or other licensed health care professional also must become familiar with the signs and symptoms that may indicate that a worker is receiving otherwise unrecognized and exceptionally high exposure levels of MC.

An example of a medical and work history that would satisfy the requirement for a comprehensive or interim work history is represented by the following:

The following is a list of recommended questions and issues for the self-administered questionnaire for methylene chloride exposure.

BILLING CODE 4510–26–P

QUESTIONNAIRE FOR METHYLENE CHLORIDE EXPOSURE

I. Demographic Information

1. Name
2. Date
3. Date of Birth
4. Age
5. Present occupation
6. Sex
7. Race (Check all that apply)

a. White ___
b. Black or African American___
c. Asian ___
d. Hispanic or Latino ___
e. American Indian or Alaska Native ___
f. Native Hawaiian or Other Pacific Islander ___

II. Occupational History

1. Have you ever worked with methylene chloride, dichloromethane, methylene dichloride, or CH_2Cl_2 (all are different names for the same chemical)? Please list which on the occupational history form if you have not already.

2. If you have worked in any of the following industries and have not listed them on the occupational history form, please do so.

Furniture stripping
Polyurethane foam manufacturing
Chemical manufacturing or formulation
Pharmaceutical manufacturing
Any industry in which you used solvents to clean and degrease equipment or parts
Construction, especially painting and refinishing
Aerosol manufacturing
Any industry in which you used aerosol adhesives

3. If you have not listed hobbies or household projects on the occupational history form, especially furniture refinishing, spray painting, or paint stripping, please do so.

III. Medical History

A. General

1. Do you consider yourself to be in good health? If no, state reason(s).

2. Do you or have you ever had:

   a. Persistent thirst
   b. Frequent urination (three times or more at night)
   c. Dermatitis or irritated skin
   d. Non-healing wounds

3. What prescription or non-prescription medications do you take, and for what reasons?

4. Are you allergic to any medications, and what type of reaction do you have?

B. Respiratory

1. Do you have or have you ever had any chest illnesses or diseases? Explain.

2. Do you have or have you ever had any of the following:

   a. Asthma
   b. Wheezing
   c. Shortness of breath

3. Have you ever had an abnormal chest X-ray? If so, when, where, and what were the findings?

4. Have you ever had difficulty using a respirator or breathing apparatus? Explain.

5. Do any chest or lung diseases run in your family? Explain.

6. Have you ever smoked cigarettes, cigars, or a pipe? Age started:

7. Do you now smoke?

8. If you have stopped smoking completely, how old were you when you stopped?

9. On the average of the entire time you smoked, how many packs of cigarettes, cigars, or bowls of tobacco did you smoke per day?

C. Cardiovascular

1. Have you ever been diagnosed with any of the following: Which of the following apply to you now or did apply to you at some time in the past, even if the problem is controlled by medication? Please explain any yes answers (i.e., when problem was diagnosed, length of time on medication).

    a. High cholesterol or triglyceride level

    b. Hypertension (high blood pressure)

    c. Diabetes

    d. Family history of heart attack, stroke, or blocked arteries

2. Have you ever had chest pain? If so, answer the next five questions.

    a. What was the quality of the pain (i.e., crushing, stabbing, squeezing)?

    b. Did the pain go anywhere (i.e., into jaw, left arm)?

    c. What brought the pain out?

    d. How long did it last?

    e. What made the pain go away?

3. Have you ever had heart disease, a heart attack, stroke, aneurysm, or blocked arteries anywhere in your body? Explain (when, treatment).

4. Have you ever had bypass surgery for blocked arteries in your heart or anywhere else? Explain.

5. Have you ever had any other procedures done to open up a blocked artery (balloon angioplasty, carotid endarterectomy, clot-dissolving drug)?

6. Do you have or have you ever had (explain each):

    a. Heart murmur
    b. Irregular heartbeat
    c. Shortness of breath while lying flat
    d. Congestive heart failure
    e. Ankle swelling
    f. Recurrent pain anywhere below the waist while walking

7. Have you ever had an electrocardiogram (EKG)? When?

8. Have you ever had an abnormal EKG? If so, when, where, and what were the findings?

9. Do any heart diseases, high blood pressure, diabetes, high cholesterol, or high triglycerides run in your family? Explain.

D. Hepatobiliary and Pancreas

1. Do you now or have you ever drunk alcoholic beverages?
   Age started: _____ Age stopped: _____.

2. Average numbers per week:

    a. Beers: _____, ounces in usual container:
    b. Glasses of wine: _____, ounces per glass:
    c. Drinks: _____, ounces in usual container:

3. Do you have or have you ever had (explain each):

    a. Hepatitis (infectious, autoimmune, drug-induced, or chemical)
    b. Jaundice
    c. Elevated liver enzymes or elevated bilirubin
    d. Liver disease or cancer

E. Central Nervous System

1. Do you or have you ever had (explain each):

   a. Headache
   b. Dizziness
   c. Fainting
   d. Loss of consciousness
   e. Garbled speech
   f. Lack of balance
   g. Mental/psychiatric illness
   h. Forgetfulness

F. Hematologic

1. Do you have, or have you ever had (explain each):

   a. Anemia
   b. Sickle cell disease or trait
   c. Glucose-6-phosphate dehydrogenase deficiency
   d. Bleeding tendency disorder

2. If not already mentioned previously, have you ever had a reaction to sulfa drugs or to drugs used to prevent or treat malaria? What was the drug? Describe the reaction.

B. Physical Examination

The complete physical examination, when coupled with the medical and occupational history, assists the physician or other licensed health care professional in detecting pre-existing conditions that might place the employee at increased risk, and establishes a baseline for future health monitoring. These examinations should include:

1. Clinical impressions of the nervous system, cardiovascular function and pulmonary function, with additional tests conducted where indicated or determined by the examining physician or other licensed health care professional to be necessary.

2. An evaluation of the advisability of the worker using a respirator, because the use of certain respirators places an additional burden on the cardiopulmonary system. It is necessary for the attending physician or other licensed health care professional to evaluate the cardiopulmonary function of these workers, in order to inform the employer in a written medical opinion of the worker's ability or fitness to work in an area requiring the use of certain types of respiratory protective equipment. The presence of facial hair or scars that might interfere with the worker's ability to wear certain types of respirators should also be noted during the examination and in the written medical opinion.

Because of the importance of lung function to workers required to wear certain types of respirators to protect themselves from MC exposure, these workers must receive an assessment of pulmonary function before they begin to wear a negative pressure respirator and at least annually thereafter. The recommended pulmonary function tests include measurement of the employee's forced vital capacity (FVC), forced expiratory volume at one second (FEV_1), as well as calculation of the ratios of FEV_1 to FVC, and the ratios of measured FVC and measured FEV_1 to expected respective values corrected for variation due to age, sex, race, and height. Pulmonary function evaluation must be conducted by a physician or other licensed health care professional experienced in pulmonary function tests.

The following is a summary of the elements of a physical exam which would fulfill the requirements under the MC standard:

PHYSICAL EXAM

I. Skin and appendages

1. Irritated or broken skin
2. Jaundice
3. Clubbing cyanosis, edema
4. Capillary refill time
5. Pallor

II. Head

1. Facial deformities
2. Scars
3. Hair growth

III. Eyes

1. Scleral icterus
2. Corneal arcus
3. Pupillary size and response
4. Fundoscopic exam

IV. Chest

1. Standard exam

V. Heart

1. Standard exam
2. Jugular vein distension
3. Peripheral pulses

VI. Abdomen

1. Liver span

VII. Nervous System

1. Complete standard neurologic exam

VIII. Laboratory

1. Hemoglobin and hematocrit
2. Alanine aminotransferase (ALT, SGPT)
3. Post-shift carboxyhemoglobin

IX. Studies

1. Pulmonary function testing
2. Electrocardiogram

An evaluation of the oxygen carrying capacity of the blood of employees (for example by measured red blood cell volume) is considered useful, especially for workers acutely exposed to MC.

It is also recommended, but not required, that end of shift carboxyhemoglobin levels be determined periodically, and any level above 3% for non-smokers and above 10% for smokers should prompt an investigation of the worker and his workplace. This test is recommended because MC is metabolized to CO, which combines strongly with hemoglobin, resulting in a reduced capacity of the blood to transport oxygen in the body. This is of particular concern for cigarette smokers because they already have a diminished hemoglobin capacity due to the presence of CO in cigarette smoke.

C. Additional Examinations and Referrals

1. Examination by a Specialist

When a worker examination reveals unexplained symptoms or signs (i.e. in the physical examination or in the laboratory tests), follow-up medical examinations are necessary to assure that MC exposure is not adversely affecting the worker's health. When the examining physician or other licensed health care professional finds it necessary, additional tests should be included to determine the nature of the medical

problem and the underlying cause. Where relevant, the worker should be sent to a specialist for further testing and treatment as deemed necessary.

The final rule requires additional investigations to be covered and it also permits physicians or other licensed health care professionals to add appropriate or necessary tests to improve the diagnosis of disease should such tests become available in the future.

2. Emergencies

The examination of workers exposed to MC in an emergency should be directed at the organ systems most likely to be affected. If the worker has received a severe acute exposure, hospitalization may be required to assure proper medical intervention. It is not possible to precisely define "severe," but the physician or other licensed health care professional's judgment should not merely rest on hospitalization. If the worker has suffered significant conjunctival, oral, or nasal irritation, respiratory distress, or discomfort, the physician or other licensed health care professional should instigate appropriate follow-up procedures. These include attention to the eyes, lungs and the neurological system. The frequency of follow-up examinations should be determined by the attending physician or other licensed health care professional. This testing permits the early identification essential to proper medical management of such workers.

D. Employer Obligations

The employer is required to provide the responsible physician or other licensed health care professional and any specialists involved in a diagnosis with the following information: a copy of the MC standard including relevant appendices, a description of the affected employee's duties as they relate to his or her exposure to MC; an estimate of the employee's exposure including duration (e.g., 15hr/wk, three 8-hour shifts/wk, full

time); a description of any personal protective equipment used by the employee, including respirators; and the results of any previous medical determinations for the affected employee related to MC exposure to the extent that this information is within the employer's control.

E. Physicians' or Other Licensed Health Care Professionals' Obligations

The standard in this section requires the employer to ensure that the physician or other licensed health care professional provides a written statement to the employee and the employer. This statement should contain the physician's or licensed health care professional's opinion as to whether the employee has any medical condition placing him or her at increased risk of impaired health from exposure to MC or use of respirators, as appropriate. The physician or other licensed health care professional should also state his or her opinion regarding any restrictions that should be placed on the employee's exposure to MC or upon the use of protective clothing or equipment such as respirators. If the employee wears a respirator as a result of his or her exposure to MC, the physician or other licensed health care professional's opinion should also contain a statement regarding the suitability of the employee to wear the type of respirator assigned. Furthermore, the employee should be informed by the physician or other licensed health care professional about the cancer risk of MC and about risk factors for heart disease, and the potential for exacerbation of underlying heart disease by exposure to MC through its metabolism to carbon monoxide. Finally, the physician or other licensed health care professional should inform the employer that the employee has been told the results of the medical examination and of any medical conditions which require further explanation

or treatment. This written opinion must not contain any information on specific findings or diagnosis unrelated to employee's occupational exposures.

The purpose in requiring the examining physician or other licensed health care professional to supply the employer with a written opinion is to provide the employer with a medical basis to assist the employer in placing employees initially, in assuring that their health is not being impaired by exposure to MC, and to assess the employee's ability to use any required protective equipment.

BILLING CODE 4510–26–C

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PART 1915—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENT

■ 15. The authority citation for part 1915 continues to read as follows:

Authority: 33 U.S.C. 941; 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754); 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), 5–2007 (72 FR 31160), 4–2010 (75 FR 55355), or 1–2012 (77 FR 3912); 29 CFR part 1911; and 5 U.S.C. 553, as applicable.

Sections 1915.120 and 1915.152 also issued under 29 CFR part 1911.

Subpart A—General Provisions

■ 16. Amend § 1915.5 by:
■ a. Revising paragraphs (b) and (c).
■ b. Redesignating paragraph (d) as follows:

Old paragraph	New paragraph
(d)(1)	(d).
(d)(1)(i) through (xiii)	(d)(1) through (13).
(d)(1)(vi)(A) through (C)	(d)(6)(i) through (iii).
(d)(1)(vii)(A) through (C)	(d)(7)(i) through (iii).
(d)(1)(viii)(A) through (C)	(d)(8)(i) through (iii).
(d)(2)	(e).
(d)(2)(i)	(e)(1).
(d)(3)	(f).
(d)(3)(i)	(f)(1).
(d)(4)	(i).
(d)(4)(i) through (xviii)	(i)(1) though (18).
(d)(5)	(g).
(d)(5)(i) and (ii)	(g)(1) and (2).

■ c. In newly redesignated paragraph (d) introductory text, removing ''below in this paragraph'' and adding in its place ''in this paragraph (d).''
■ d. Adding reserved paragraphs (e)(2) and (f)(2).
■ e. In newly redesignated paragraph (g) introductory text, removing ''below in this paragraph'' and adding in its place ''in this paragraph (g).''
■ f. Adding paragraph (h).

The revisions and additions read as follows:

§ 1915.5 Incorporation by reference.

* * * * *

(b)(1) The standards listed in this section are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, OSHA must publish a document in the **Federal Register** and the material must be available to the public.

(2) Any changes in the standards incorporated by reference in this part and an official historic file of such changes are available for inspection in the Docket Office at the national office of the Occupational Safety and Health Administration, U.S. Department of Labor, Washington, DC 20210; telephone: 202–693–2350 (TTY number: 877–889–5627).

(c) Copies of standards listed in this section and issued by private standards organizations are available for purchase from the issuing organizations at the addresses or through the other contact information listed below for these private standards organizations. In addition, the standards are available for inspection at any Regional Office of the Occupational Safety and Health Administration (OSHA), or at the OSHA Docket Office, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3508, Washington, DC 20210; telephone: 202–693–2350 (TTY number: 877–889–5627). These standards are also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of these standards at NARA, telephone: 202–741–6030, or go to *www.archives.gov/federalregister/cfr/ibr-locations.html.*

* * * * *

(h) The following material is available from the International Labour Organization (ILO), 4 route des Morillons, CH–1211 Genève 22, Switzerland; telephone: +41 (0) 22 799 6111; fax: +41 (0) 22 798 8685; website: *www.ilo.org/.*

(1) Guidelines for the Use of the ILO International Classification of Radiographs of Pneumoconioses, Revised Edition 2011, Occupational safety and health series; 22 (Rev.2011), IBR approved for § 1915.1001.

(2) [Reserved]

* * * * *

Subpart F—General Working Conditions

■ 17. Revise paragraph (b)(33) of § 1915.80 to read as follows:

§ 1915.80 Scope, application, definitions, and effective dates.

* * * * *

(b) * * *

(33) *Vermin.* Insects, birds, rodents and other animals that may create safety and health hazards for employees.

* * * * *

Subpart Z—Toxic and Hazardous Substances

■ 18. Amend § 1915.1001 by revising paragraph (m)(2)(ii)(C) and appendices D and E and I, sections III and IV, to read as follows:

§ 1915.1001 Asbestos.

* * * * *

(m) * * *

(2) * * *

(ii) * * *

(C) A physical examination directed to the pulmonary and gastrointestinal systems, including a 14- by 17-inch or other reasonably-sized standard film or digital posterior-anterior chest X-ray to be administered at the discretion of the

physician, and pulmonary function tests of forced vital capacity (FVC) and forced expiratory volume at one second (FEV_1). Classification of all chest X-rays shall be conducted in accordance with appendix E to this section.

* * * * *

BILLING CODE 4510–26–P

APPENDIX D TO § 1915.1001—MEDICAL QUESTIONNAIRES; MANDATORY

This mandatory appendix contains the medical questionnaires that must be administered to all employees who are exposed to asbestos, tremolite, anthophyllite, actinolite, or a combination of these minerals above the permissible exposure limit (0.1 f/cc), and who will therefore be included in their employer's medical surveillance program. Part 1 of this appendix contains the Initial Medical Questionnaire, which must be obtained for all new hires who will be covered by the medical surveillance requirements. Part 2 includes the abbreviated Periodical Medical Questionnaire, which must be administered to all employees who are provided periodic medical examinations under the medical surveillance provisions of the standard in this section.

Part 1
INITIAL MEDICAL QUESTIONNAIRE

1. NAME_____

2. CLOCK NUMBER_____

3. PRESENT OCCUPATION_____

4. PLANT _____

5. ADDRESS_____

6. _____
(Zip Code)

7. TELEPHONE NUMBER_____

8. INTERVIEWER_____

9. DATE _____

10. Date of Birth _____
Month Day Year

11. Place of Birth _____

12. Sex
1. Male ___
2. Female ___

13. What is your marital status?
1. Single ___
2. Married ___
3. Widowed ___
4. Separated/ Divorced ___

14. Race (Check all that apply)

1. White ___
2. Black or African American ___
3. Asian ___
4. Hispanic or Latino ___
5. American Indian or Alaska Native ___
6. Native Hawaiian or Other Pacific Islander ___

15. What is the highest grade completed in school? _____
(For example 12 years is completion of high school)

OCCUPATIONAL HISTORY

16A. Have you ever worked full time (30 hours per week or more) for 6 months or more? 1. Yes ___ 2. No ___

IF YES TO 16A:

B. Have you ever worked for a year or more in any dusty job? 1. Yes ___ 2. No ___ 3. Does Not Apply ___

Specify job/industry _____ Total Years Worked ___

Was dust exposure: 1. Mild ___ 2. Moderate ___ 3. Severe ___

C. Have you ever been exposed to gas or chemical fumes in your work? 1. Yes ___ 2. No ___

Specify job/industry _____ Total Years Worked ___

Was exposure: 1. Mild ____ 2. Moderate ___ 3. Severe ___

D. What has been your usual occupation or job—the one you have worked at the longest?

1. Job occupation _____

2. Number of years employed in this occupation _____

3. Position/job title _____

4. Business, field or industry _____

(Record on lines the years in which you have worked in any of these industries, e.g. 1960-1969)

Have you ever worked:	YES	NO
E. In a mine?	_____	_____
F. In a quarry?	_____	_____
G. In a foundry?	_____	_____
H. In a pottery?	_____	_____
I. In a cotton, flax or hemp mill?....	_____	_____
J. With asbestos?	_____	_____

17. PAST MEDICAL HISTORY	YES	NO
A. Do you consider yourself to be in good health?	_____	_____
If "NO" state reason _____		
B. Have you any defect of vision?	_____	_____
If "YES" state nature of defect _____		
C. Have you any hearing defect?	_____	_____
If "YES" state nature of defect _____		

D. Are you suffering from or have you ever suffered from:	YES	NO
a. Epilepsy (or fits, seizures, convulsions)?	_____	_____
b. Rheumatic fever?	_____	_____
c. Kidney disease?	_____	_____
d. Bladder disease?	_____	_____
e. Diabetes?	_____	_____
f. Jaundice?	_____	_____

18. CHEST COLDS AND CHEST ILLNESSES

18A. If you get a cold, does it "usually" go to your chest? (Usually means more than 1/2 the time)	1. Yes ___ 2. No ___ 3. Don't get colds ___
19A. During the past 3 years, have you had any chest illnesses that have kept you off work, indoors at home, or in bed?	1. Yes ___ 2. No ___

IF YES TO 19A:

B. Did you produce phlegm with any of these chest illnesses?	1. Yes ___ 2. No ___ 3. Does Not Apply ___
C. In the last 3 years, how many such illnesses with (increased) phlegm did you have which lasted a week or more?	Number of illnesses ___ No such illnesses ___
20. Did you have any lung trouble before the age of 16?	1. Yes ___ 2. No ___

21. Have you ever had any of the following?

1A. Attacks of bronchitis? 1. Yes ___ 2. No ___

IF YES TO 1A:

B. Was it confirmed by a doctor? 1. Yes ___ 2. No ___
3. Does Not Apply ___

C. At what age was your first attack? Age in Years ___
Does Not Apply ___

2A. Pneumonia (include bronchopneumonia)? 1. Yes ___ 2. No ___

IF YES TO 2A:

B. Was it confirmed by a doctor? 1. Yes ___ 2. No ___
3. Does Not Apply ___

C. At what age did you first have it? Age in Years ___
Does Not Apply ___

3A. Hay Fever? 1. Yes ___ 2. No ___

IF YES TO 3A:

B. Was it confirmed by a doctor? 1. Yes ___ 2. No ___
3. Does Not Apply ___

C. At what age did it start? Age in Years ___
Does Not Apply ___

22A. Have you ever had chronic bronchitis? 1. Yes ___ 2. No ___

IF YES TO 22A:

B. Do you still have it? 1. Yes ___ 2. No ___
3. Does Not Apply ___

C. Was it confirmed by a doctor? 1. Yes ___ 2. No ___
3. Does Not Apply ___

D. At what age did it start? Age in Years ___
Does Not Apply ___

23A. Have you ever had emphysema? 1. Yes ___ 2. No ___

IF YES TO 23A:

B. Do you still have it? 1. Yes ___ 2. No ___
3. Does Not Apply ___

C. Was it confirmed by a doctor? 1. Yes ___ 2. No ___
3. Does Not Apply ___

D. At what age did it start? Age in Years ___
Does Not Apply ___

24A. Have you ever had asthma? 1. Yes ___ 2. No ___

IF YES TO 24A:

B. Do you still have it? 1. Yes ___ 2. No ___
3. Does Not Apply ___

C. Was it confirmed by a doctor? 1. Yes ___ 2. No ___
3. Does Not Apply ___

D. At what age did it start? Age in Years ___
Does Not Apply ___

E. If you no longer have it, at what age did it stop? Age stopped ___
Does Not Apply ___

25. Have you ever had:

A. Any other chest illness? 1. Yes ___ 2. No ___

If yes, please specify _____

B. Any chest operations? 1. Yes ___ 2. No ___

If yes, please specify _____

C. Any chest injuries? 1. Yes ___ 2. No ___

If yes, please specify _____

26A. Has a doctor ever told you that you had heart trouble? 1. Yes ___ 2. No ___

IF YES TO 26A:

B. Have you ever had treatment for heart trouble in the past 10 years? 1. Yes ___ 2. No ___ 3. Does Not Apply ___

27A. Has a doctor told you that you had high blood pressure? 1. Yes ___ 2. No ___

IF YES TO 27A:

B. Have you had any treatment for high blood pressure (hypertension) in the past 10 years? 1. Yes ___ 2. No ___ 3. Does Not Apply ___

28. When did you last have your chest X-rayed? (Year) ___ ___ ___ ___

29. Where did you last have your chest X-rayed (if known)? _____

What was the outcome? _____

FAMILY HISTORY

30. Were either of your natural parents ever told by a doctor that they had a chronic lung condition such as:	FATHER			MOTHER		
	1. Yes	2. No	3. Don't know	1. Yes	2. No	3. Don't know
A. Chronic Bronchitis?	___	___	___	___	___	___
B. Emphysema?	___	___	___	___	___	___
C. Asthma?	___	___	___	___	___	___
D. Lung cancer?	___	___	___	___	___	___
E. Other chest conditions?	___	___	___	___	___	___
F. Is parent currently alive?	___	___	___	___	___	___
G. Please Specify	___ Age if Living ___ Age at Death ___ Don't Know			___ Age if Living ___ Age at Death ___ Don't Know		
H. Please specify cause of death	_____			_____		

COUGH

31A. Do you usually have a cough? (Count a cough with first smoke or on first going out of doors. Exclude clearing of throat.) (If no, skip to question 31C.)	1. Yes ___	2. No ___
B. Do you usually cough as much as 4 to 6 times a day 4 or more days out of the week?	1. Yes ___	2. No ___
C. Do you usually cough at all on getting up or first thing in the morning?	1. Yes ___	2. No ___

D. Do you usually cough at all during the rest of the day or at night? 1. Yes ___ 2. No ___

IF YES TO ANY OF ABOVE (31A, B, C, OR D), ANSWER THE FOLLOWING. IF NO TO ALL, CHECK "DOES NOT APPLY" AND SKIP TO NEXT PAGE

E. Do you usually cough like this on most days for 3 consecutive months or more during the year? 1. Yes ___ 2. No ___ 3. Does not apply ___

F. For how many years have you had the cough? Number of years ___ Does not apply ___

32A. Do you usually bring up phlegm from your chest? Count phlegm with the first smoke or on first going out of doors. Exclude phlegm from the nose. Count swallowed phlegm.) (If no, skip to 32C) 1. Yes ___ 2. No ___

B. Do you usually bring up phlegm like this as much as twice a day 4 or more days out of the week? 1. Yes ___ 2. No ___

C. Do you usually bring up phlegm at all on getting up or first thing in the morning? 1. Yes ___ 2. No ___

D. Do you usually bring up phlegm at all on during the rest of the day or at night? 1. Yes ___ 2. No ___

IF YES TO ANY OF THE ABOVE (32A, B, C, OR D), ANSWER THE FOLLOWING:

IF NO TO ALL, CHECK "DOES NOT APPLY" AND SKIP TO 33A

E. Do you bring up phlegm like this on most days for 3 consecutive months or more during the year? 1. Yes ___ 2. No ___ 3. Does not apply ___

F. For how many years have you had trouble with phlegm? Number of years ___ Does not apply ___

EPISODES OF COUGH AND PHLEGM

33A. Have you had periods or episodes of (increased*) cough and phlegm lasting for 3 weeks or more each year?
*(For persons who usually have cough and/or phlegm)
1. Yes ___ 2. No ___

IF YES TO 33A

B. For how long have you had at least 1 such episode per year?
Number of years ___
Does not apply ___

WHEEZING

34A. Does your chest ever sound wheezy or whistling

1. When you have a cold? 1. Yes ___ 2. No ___

2. Occasionally apart from colds? 1. Yes ___ 2. No ___

3. Most days or nights? 1. Yes ___ 2. No ___

B. For how many years has this been present?
Number of years ___
Does not apply ___

35A. Have you ever had an attack of wheezing that has made you feel short of breath? 1. Yes ___ 2. No ___

IF YES TO 35A

B. How old were you when you had your first such attack?
Age in years ___
Does not apply ___

C. Have you had 2 or more such episodes? 1. Yes ___ 2. No ___ 3. Does not apply ___

D. Have you ever required medicine or treatment for the(se) attack(s)? 1. Yes ___ 2. No ___ 3. Does not apply ___

BREATHLESSNESS

36. If disabled from walking by any condition other than heart or lung disease, please describe and proceed to question 38A.

Nature of condition(s)
_____
_____

37A. Are you troubled by shortness of breath when hurrying on the level or walking up a slight hill?

1. Yes ___ 2. No ___

IF YES TO 37A

B. Do you have to walk slower than people of your age on the level because of breathlessness?

1. Yes ___ 2. No ___
3. Does not apply ___

C. Do you ever have to stop for breath when walking at your own pace on the level?

1. Yes ___ 2. No ___
3. Does not apply ___

D. Do you ever have to stop for breath after walking about 100 yards (or after a few minutes) on the level?

1. Yes ___ 2. No ___
3. Does not apply ___

E. Are you too breathless to leave the house or breathless on dressing or climbing one flight of stairs?

1. Yes ___ 2. No ___
3. Does not apply ___

TOBACCO SMOKING

38A. Have you ever smoked cigarettes?
(No means less than 20 packs of cigarettes or 12 oz. of tobacco in a lifetime or less than 1 cigarette a day for 1 year.)

1. Yes ___ 2. No ___

IF YES TO 38A

B. Do you now smoke cigarettes (as of one month ago)

1. Yes ___ 2. No ___
3. Does not apply ___

C. How old were you when you first started regular cigarette smoking?	Age in years ___ Does not apply ___
D. If you have stopped smoking cigarettes completely, how old were you when you stopped?	Age stopped ___ Check if still smoking ___ Does not apply ___
E. How many cigarettes do you smoke per day now?	Cigarettes per day ___ Does not apply ___
F. On the average of the entire time you smoked, how many cigarettes did you smoke per day?	Cigarettes per day ___ Does not apply ___
G. Do or did you inhale the cigarette smoke?	1. Does not apply ___ 2. Not at all ___ 3. Slightly ___ 4. Moderately ___ 5. Deeply ___
39A. Have you ever smoked a pipe regularly? (Yes means more than 12 oz. of tobacco in a lifetime.)	1. Yes ___ 2. No ___

IF YES TO 39A

FOR PERSONS WHO HAVE EVER SMOKED A PIPE

B. 1. How old were you when you started to smoke a pipe regularly?	Age ___
2. If you have stopped smoking a pipe completely, how old were you when you stopped?	Age stopped ___ Check if still smoking pipe ___ Does not apply ___

C. On the average over the entire time you smoked a pipe, how much pipe tobacco did you smoke per week?	___ oz. per week (a standard pouch of tobacco contains 1 1/2 oz.) ___ Does not apply
D. How much pipe tobacco are you smoking now?	oz. per week ___ Not currently smoking a pipe ___
E. Do you or did you inhale the pipe smoke?	1. Never smoked ___ 2. Not at all ___ 3. Slightly ___ 4. Moderately ___ 5. Deeply ___
40A. Have you ever smoked cigars regularly?	1. Yes ___ 2. No ___ (Yes means more than 1 cigar a week for a year)

IF YES TO 40A

FOR PERSONS WHO HAVE EVER SMOKED A CIGAR

B. 1. How old were you when you started smoking cigars regularly?	Age ___
2. If you have stopped smoking cigars completely, how old were you when you stopped smoking cigars?	Age stopped ___ Check if still ___ Does not apply ___
C. On the average over the entire time you smoked cigars, how many cigars did you smoke per week?	Cigars per week ___ Does not apply ___
D. How many cigars are you smoking per week now?	Cigars per week ___ Check if not smoking cigars currently ___
E. Do or did you inhale the cigar	1. Never smoked ___

smoke?	2. Not at all ___ 3. Slightly ___ 4. Moderately ___ 5. Deeply ___

Signature _____ Date _____

Part 2
PERIODIC MEDICAL QUESTIONNAIRE

1. NAME _____

2. CLOCK NUMBER ___ ___ ___ ___ ___ ___ ___

3. PRESENT OCCUPATION _____

4. PLANT _____

5. ADDRESS _____

6. _____
(Zip Code)

7. TELEPHONE NUMBER _____

8. INTERVIEWER _____

9. DATE _____

10. What is your marital status? 1. Single ___ 2. Married ___ 3. Widowed ___ 4. Separated/ Divorced ___

11. OCCUPATIONAL HISTORY

11A. In the past year, did you work full time (30 hours per week or more) for 6 months or more? 1. Yes ___ 2. No ___

IF YES TO 11A:

11B. In the past year, did you work in a dusty job? 1. Yes ___ 2. No ___ 3. Does not Apply ___

11C. Was dust exposure: 1. Mild ___ 2. Moderate ___ 3. Severe ___

11D. In the past year, were you exposed to gas or chemical fumes in your work? 1. Yes ___ 2. No ___

11E. Was exposure: 1. Mild ___ 2. Moderate ___ 3. Severe ___

11F. In the past year, what was your:
1. Job/occupation? _____
2. Position/job title? _____

12. RECENT MEDICAL HISTORY

12A. Do you consider yourself to be in good health? Yes ___ No ___

If NO, state reason _____

12B. In the past year, have you developed:

	Yes	No
Epilepsy?	___	___
Rheumatic fever?	___	___
Kidney disease?	___	___
Bladder disease?	___	___
Diabetes?	___	___
Jaundice?	___	___
Cancer?	___	___

13. CHEST COLDS AND CHEST ILLNESSES

13A. If you get a cold, does it "usually" go to your chest? (usually means more than 1/2 the time)
1. Yes ___ 2. No ___
3. Don't get colds ___

14A. During the past year, have you had any chest illnesses that have kept you off work, indoors at home, or in bed?
1. Yes ___ 2. No ___
3. Does Not Apply ___

IF YES TO 14A:

14B. Did you produce phlegm with any of these chest illnesses?
1. Yes ___ 2. No ___
3. Does Not Apply ___

14C. In the past year, how many such illnesses with (increased) phlegm did you have which lasted a week or more?
Number of illnesses ___
No such illnesses ___

15. RESPIRATORY SYSTEM

In the past year have you had:

	Yes or No	Further Comment on Positive Answers
Asthma	_____	
Bronchitis	_____	
Hay Fever	_____	
Other Allergies	_____	

	Yes or No	Further Comment on Positive Answers
Pneumonia	_____	
Tuberculosis	_____	
Chest Surgery	_____	
Other Lung Problems	_____	
Heart Disease	_____	

Do you have:

	Yes or No	Further Comment on Positive Answers
Frequent colds	_____	
Chronic cough	_____	
Shortness of breath when walking or climbing one flight or stairs	_____	

Do you:

Wheeze	_____	
Cough up phlegm	_____	
Smoke cigarettes	_____	Packs per day ____ How many years ___

Date _____ Signature _____

BILLING CODE 4510–26–C

Appendix E to § 1915.1001—Classification of Chest X-Rays. Mandatory

(a) Chest X-rays shall be classified in accordance with the Guidelines for the use of the ILO International Classification of Radiographs of Pneumoconioses (revised edition 2011) (incorporated by reference, see § 1915.5), and recorded on a classification form following the format of the CDC/NIOSH (M) 2.8 form. As a minimum, the content within the bold lines of this form (items 1 through 4) shall be included. This form is not to be submitted to NIOSH.

(b) All X-rays shall be classified only by a B-Reader, a board eligible/certified radiologist, or an experienced physician with known expertise in pneumoconioses.

(c) Whenever classifying chest X-ray film, the physician shall have immediately available for reference a complete set of the ILO standard format radiographs provided for use with the Guidelines for the use of the ILO International Classification of Radiographs of Pneumoconioses (revised edition 2011).

(d) Whenever classifying digitally-acquired chest X-rays, the physician shall have immediately available for reference a complete set of ILO standard digital chest radiographic images provided for use with the Guidelines for the Use of the ILO International Classification of Radiographs of Pneumoconioses (revised edition 2011). Classification of digitally-acquired chest X-rays shall be based on the viewing of images displayed as electronic copies and shall not be based on the viewing of hard copy printed transparencies of images.

* * * * *

Appendix I to § 1915.1001—Medical Surveillance Guidelines for Asbestos, Non-Mandatory

* * * * *

III. Signs and Symptoms of Exposure-Related Disease

The signs and symptoms of lung cancer or gastrointestinal cancer induced by exposure to asbestos are not unique, except that a chest X-ray of an exposed patient with lung cancer may show pleural plaques, pleural calcification, or pleural fibrosis, and may also show asbestosis (*i.e.,* small irregular parenchymal opacities). Symptoms characteristic of mesothelioma include shortness of breath, pain in the chest or abdominal pain. Mesothelioma has a much longer average latency period compared with lung cancer (40 years versus 15–20 years), and mesothelioma is therefore more likely to be found among workers who were first exposed to asbestos at an early age. Mesothelioma is a fatal disease.

Asbestosis is pulmonary fibrosis caused by the accumulation of asbestos fibers in the lungs. Symptoms include shortness of breath, coughing, fatigue, and vague feelings of

sickness. When the fibrosis worsens, shortness of breath occurs even at rest. The diagnosis of asbestosis is most commonly based on a history of exposure to asbestos, the presence of characteristic radiologic abnormalities, end-inspiratory crackles (rales), and other clinical features of fibrosing lung disease. Pleural plaques and thickening may be observed on chest X-rays. Asbestosis is often a progressive disease even in the absence of continued exposure, although this appears to be a highly individualized characteristic. In severe cases, death may be caused by respiratory or cardiac failure.

IV. Surveillance and Preventive Considerations

As noted in section III of this appendix, exposure to asbestos have been linked to an increased risk of lung cancer, mesothelioma, gastrointestinal cancer, and asbestosis among occupationally exposed workers. Adequate screening tests to determine an employee's potential for developing serious chronic diseases, such as a cancer, from exposure to asbestos do not presently exist. However, some tests, particularly chest X-rays and pulmonary function tests, may indicate that an employee has been overexposed to asbestos increasing his or her risk of developing exposure related chronic diseases. It is important for the physician to become familiar with the operating conditions in which occupational exposure to asbestos is likely to occur. This is particularly important in evaluating medical and work histories and in conducting physical examinations. When an active employee has been identified as having been overexposed to asbestos measures taken by the employer to eliminate or mitigate further exposure should also lower the risk of serious long-term consequences.

The employer is required to institute a medical surveillance program for all employees who are or will be exposed to asbestos at or above the permissible exposure limits (0.1 fiber per cubic centimeter of air) for 30 or more days per year and for all employees who are assigned to wear a negative-pressure respirator. All examinations and procedures must be performed by or under the supervision of licensed physician at a reasonable time and place, and at no cost to the employee.

Although broad latitude is given to the physician in prescribing specific tests to be included in the medical surveillance program, OSHA requires inclusion of the following elements in the routine examination,

(i) Medical and work histories with special emphasis directed to symptoms of the respiratory system, cardiovascular system, and digestive tract.

(ii) Completion of the respiratory disease questionnaire contained in appendix D to this section.

(iii) A physical examination including a chest X-ray and pulmonary function test that includes measurement of the employee's forced vital capacity (FVC) and forced expiratory volume at one second (FEV_1).

(iv) Any laboratory or other test that the examining physician deems by sound medical practice to be necessary.

The employer is required to make the prescribed tests available at least annually to those employees covered; more often than specified if recommended by the examining physician; and upon termination of employment.

The employer is required to provide the physician with the following information: A copy of the standard in this section (including all appendices to this section); a description of the employee's duties as they relate to asbestos exposure; the employee's representative level of exposure to asbestos; a description of any personal protective and respiratory equipment used; and information from previous medical examinations of the affected employee that is not otherwise available to the physician. Making this information available to the physician will aid in the evaluation of the employee's health in relation to assigned duties and fitness to wear personal protective equipment, if required.

The employer is required to obtain a written opinion from the examining physician containing the results of the medical examination; the physician's opinion as to whether the employee has any detected medical conditions that would place the employee at an increased risk of exposure-related disease; any recommended limitations on the employee or on the use of personal protective equipment; and a statement that the employee has been informed by the physician of the results of the medical examination and of any medical conditions related to asbestos exposure that require further explanation or treatment. This written opinion must not reveal specific findings or diagnoses unrelated to exposure to asbestos, and a copy of the opinion must be provided to the affected employee.

* * * * *

PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

Subpart A—General

■ 19. The authority citation for part 1926, subpart A, continues to read as follows:

Authority: 40 U.S.C. 3701 *et seq.;* 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), or 5–2007 (72 FR 31160), 5–2007 (72 FR 31160), 4–2010 (75 FR 55355), or 1–2012 (77 FR 3912), as applicable; and 29 CFR part 1911.

■ 20. Amend § 1926.6 by:

■ a. Revising paragraphs (a) through (c).

■ b. Redesignating paragraphs (g) through (ff) as follows:

Old paragraphs	New paragraphs
(g) and (h)	(d) and (e).
(j)	(g).
(k)	(i).
(l)	(h).
(m) through (p)	(j) through (m).
(u) through (w)	(n) through (p).
(x) and (y)	(r) and (s).
(aa)	(t).
(dd) and (ee)	(u) and (v).
(ff)	(f).

■ c. Adding reserved paragraph (d)(2).

■ d. Revising newly redesignated paragraphs (f)(1) and (2) and removing newly redesignated (f)(3) and (4).

■ e. Adding reserved paragraphs (i)(2), (l)(2), and (m)(2).

■ f. Revising newly designating paragraph (n).

■ g. Adding reserved paragraph (o)(2).

■ h. Adding paragraph (q).

■ i. Further redesignating newly redesignated paragraphs (r)(1) through (3) as paragraphs (r)(4) through (6) and adding new paragraphs (r)(1) through (3).

■ j. Revising newly redesignated paragraphs (t)(2) and (u).

■ k. Adding reserved paragraph (v)(2).

■ l. Removing reserved paragraphs (z), (bb), and (cc).

The revisions and additions read as follows:

§ 1926.6 Incorporation by reference.

(a) The standards of agencies of the U.S. Government, and organizations which are not agencies of the U.S. Government which are incorporated by reference in this part, have the same force and effect as other standards in this part. Only the mandatory provisions (*i.e.,* provisions containing the word ''shall'' or other mandatory language) of standards incorporated by reference are adopted as standards under the Occupational Safety and Health Act.

(b) The standards listed in this section are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, OSHA must publish a document in the **Federal Register** and the material must be available to the public.

(c) Copies of standards listed in this section and issued by private standards organizations are available for purchase from the issuing organizations at the addresses or through the other contact information listed below for these private standards organizations. In addition, the standards are available for inspection at any Regional Office of the Occupational Safety and Health Administration (OSHA), or at the OSHA Docket Office, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3508, Washington, DC 20210; telephone: 202–693–2350 (TTY number: 877–889–5627). These standards are also available for inspection at the

National Archives and Records Administration (NARA). For information on the availability of these standards at NARA, telephone: 202–741–6030, or go to *www.archives.gov/federal-register/cfr/ibr-locations.html.*

* * * * *

(f) * * *

(1) ANSI B15.1–1953 (R1958), Safety Code for Mechanical Power-Transmission Apparatus, revised 1958, IBR approved for § 1926.300(b)(2).

(2) ANSI B30.5–1968, Crawler, Locomotive, and Truck Cranes, approved Dec. 16, 1968, IBR approved for § 1926.1433(a).

* * * * *

(n) The following material is available from the Federal Highway Administration, United States Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone: 202–366–4000; website: *www.fhwa.dot.gov/:*

(1) Manual on Uniform Traffic Control Devices for Streets and Highways, 2009 Edition, December 2009 (including Revision 1 dated May 2012 and Revision 2 dated May 2012), (''MUTCD'') IBR approved for §§ 1926.200(g) and 1926.201(a).

(2) [Reserved]

* * * * *

(q) The following material is available from the International Labour Organization (ILO), 4 route des Morillons, CH–1211 Genève 22, Switzerland; telephone: +41 (0) 22 799 6111; fax: +41 (0) 22 798 8685; website:*//www.ilo.org/:*

(1) Guidelines for the Use of the ILO International Classification of Radiographs of Pneumoconioses, Revised Edition 2011, Occupational safety and health series; 22 (Rev.2011), IBR approved for § 1926.1101.

(2) [Reserved]

(r) * * *

(1) ISO 3471:2008(E), Earth-moving machinery—Roll-over protective structures—Laboratory tests and performance requirements, Fourth Edition, Aug. 8, 2008 (''ISO 3471:2008''), IBR approved for §§ 1926.1001(c) and 1926.1002(c).

(2) ISO 5700:2013(E), Tractors for agriculture and forestry—Roll-over protective structures—Static test method and acceptance conditions, Fifth Edition, May 1, 2013 (''ISO 5700:2013''), IBR approved for § 1926.1002(c).

(3) ISO 27850:2013(E), Tractors for agriculture and forestry—Falling object protective structures—Test procedures and performance requirements, First Edition, May.01, 2013 (''ISO 27850:2013''), IBR approved for § 1926.1003(c).

* * * * *

(t) * * *

(2) PCSA Std. No. 2, Mobile Hydraulic Crane Standards, 1968 (''PCSA Std. No. 2 (1968)''), IBR approved for §§ 1926.602(b) and 1926.1433(a).

* * * * *

(u) The following material is available from the Society of Automotive Engineers (SAE), 400 Commonwealth Drive, Warrendale, PA 15096; telephone: 1–877–606–7323; fax: 724–776–0790; website: *www.sae.org/:*

(1) SAE 1970 Handbook, IBR approved for § 1926.602(b).

(2) SAE J166–1971, Trucks and Wagons, IBR approved for § 1926.602(a).

(3) SAE J167, Protective Frame with Overhead Protection-Test Procedures and Performance Requirements, approved July 1970, IBR approved for § 1926.1003(b).

(4) SAE J168, Protective Enclosures-Test Procedures and Performance Requirements, approved July 1970, IBR approved for § 1926.1002(b).

(5) SAE J185 (reaf. May 2003), Access Systems for Off-Road Machines, reaffirmed May 2003 (''SAE J185 (May 1993)''), IBR approved for § 1926.1423(c).

(6) SAE J236–1971, Self-Propelled Graders, IBR approved for § 1926.602(a).

(7) SAE J237–1971, Front End Loaders and Dozers, IBR approved for § 1926.602(a).

(8) SAE J319b–1971, Self-Propelled Scrapers, IBR approved for § 1926.602(a).

(9) SAE J320a, Minimum Performance Criteria for Roll-Over Protective Structure for Rubber-Tired, Self-Propelled Scrapers, revised July 1969 (editorial change July 1970), IBR approved for § 1926.1001(b).

(10) SAE J321a–1970, Fenders for Pneumatic-Tired Earthmoving Haulage Equipment, IBR approved for § 1926.602(a).

(11) SAE J333a–1970, Operator Protection for Agricultural and Light Industrial Tractors, IBR approved for § 1926.602(a).

(12) SAE J334a, Protective Frame Test Procedures and Performance Requirements, revised July 1970, IBR approved for § 1926.1002(b).

(13) SAE J386–1969, Seat Belts for Construction Equipment, IBR approved for § 1926.602(a).

(14) SAE J394, Minimum Performance Criteria for Roll-Over Protective Structure for Rubber-Tired Front End Loaders and Rubber-Tired Dozers, approved July 1969 (editorial change July 1970), IBR approved for § 1926.1001(b).

(15) SAE J395, Minimum Performance Criteria for Roll-Over Protective Structure for Crawler Tractors and Crawler-Type Loaders, approved July 1969 (editorial change July 1970), IBR approved for § 1926.1001(b).

(16) SAE J396, Minimum Performance Criteria for Roll-Over Protective Structure for Motor Graders, approved July 1969 (editorial change July 1970), IBR approved for § 1926.1001(b).

(17) SAE J397, Critical Zone Characteristics and Dimensions for Operators of Construction and Industrial Machinery, approved July 1969, IBR approved for § 1926.1001(b).

(18) SAE J987 (rev. Jun. 2003), Lattice Boom Cranes—Method of Test, revised Jun. 2003 (''SAE J987 (Jun. 2003)''), IBR approved for § 1926.1433(c).

(19) SAE J1063 (rev. Nov. 1993), Cantilevered Boom Crane Structures—Method of Test, revised Nov. 1993 (''SAE J1063 (Nov. 1993)''), IBR approved for § 1926.1433(c).

* * * * *

Subpart D—Occupational Health and Environmental Controls

■ 21. Revise the authority citation for part 1926, subpart D, to read as follows:

Authority: 40 U.S.C. 3704; 29 U.S.C. 653, 655, and 657; and Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), 5–2007 (72 FR 31159), 4–2010 (75 FR 55355), or 1–2012 (77 FR 3912) as applicable; and 29 CFR part 1911.

Sections 1926.59, 1926.60, and 1926.65 also issued under 5 U.S.C. 553 and 29 CFR part 1911.

Section 1926.61 also issued under 49 U.S.C. 1801–1819 and 5 U.S.C. 553.

Section 1926.62 also issued under sec. 1031, Public Law 102–550, 106 Stat. 3672 (42 U.S.C. 4853).

Section 1926.65 also issued under sec. 126, Public Law 99–499, 100 Stat. 1614 (reprinted at 29 U.S.C.A. 655 Note) and 5 U.S.C. 553.

■ 22. Revise paragraph (f) of § 1926.50 to read as follows:

§ 1926.50 Medical services and first aid.

* * * * *

(f)(1) In areas where 911 emergency dispatch services are not available, the telephone numbers of the physicians, hospitals, or ambulances shall be conspicuously posted.

(2) In areas where 911 emergency dispatch services are available and an employer uses a communication system for contacting necessary emergency-medical service, the employer must:

(i) Ensure that the communication system is effective in contacting the emergency-medical service; and

(ii)(A) When using a communication system in an area that does not

automatically supply the caller's latitude and longitude information to the 911 emergency dispatcher, the employer must post in a conspicuous location at the worksite either:

(1) The latitude and longitude of the worksite; or

(2) Other location-identification information that communicates effectively to employees the location of the worksite.

(B) The requirement specified in paragraph (f)(2)(ii)(A) of this section does not apply to worksites with readily available telephone land lines that have 911 emergency service that automatically identifies the location of the caller.

* * * * *

■ 23. Amend § 1926.55 by:

■ a. Revising paragraphs (a) and (c);

■ b. Removing the heading for appendix A;

■ c. Designating the table entitled ''Threshold Limit Values of Airborne Contaminants for Construction'' as Table 1 to § 1926.55 and revising the table heading;

■ d. In newly designated Table 1:

■ i. Revising the fourth and fifth column headings;

■ ii. Removing the entry for ''Asbestos; see 1926.58'' and adding in its place the entry ''Asbestos; see § 1926.1101'';

■ iii. Removing the entry for ''Coke oven emissions; see § 1926.1129'';

■ iv. Removing the entry for ''Talc (containing asbestos); use asbestos limit; see 1926.58'' and adding in its place the entry ''Talc (containing asbestos); use asbestos limit; see § 1926.1101''; and

■ v. Removing the entry for ''Tremolite, asbestiform; see 1926.58'' and adding in its place the entry ''Tremolite, asbestiform; see § 1926.1101'';

■ e. Designating the table entitled ''Mineral Dusts'' as Table 2 to § 1926.55;

■ f. Following newly designated Table 2, removing the word ''Footnotes'' and adding in its place ''Footnotes to Tables 1 and 2 of this section:'';

■ g. Revising footnotes 2 and 3;

■ h. Removing and reserving footnote 4;

■ i. Revising footnote 5 and the footnote designated by a single asterisk; and

■ j. Removing the footnote designated by double asterisks.

The revisions read as follows:

§ 1926.55 Gases, vapors, fumes, dusts, and mists.

(a) Employers must limit an employee's exposure to any substance listed in Table 1 or 2 of this section in accordance with the following:

(1) *Substances with limits preceded by (C)—Ceiling Values.* An employee's exposure, as determined from breathing-zone air samples, to any substance in Table 1 of this section with a permissible exposure limit preceded by (C) must at no time exceed the exposure limit specified for that substance. If instantaneous monitoring is not feasible, then the employer must assess the ceiling as a 15-minute time-weighted average exposure that the employer cannot exceed at any time during the working day.

(2) *Other substances—8-hour Time Weighted Averages.* An employee's exposure, as determined from breathing-zone air samples, to any substance in Table 1 or 2 of this section with a permissible exposure limit not preceded by (C) must not exceed the limit specified for that substance measured as an 8-hour time-weighted average in any work shift.

* * * * *

(c) Paragraphs (a) and (b) of this section do not apply to the exposure of employees to airborne asbestos, tremolite, anthophyllite, or actinolite dust. Whenever any employee is exposed to airborne asbestos, tremolite, anthophyllite, or actinolite dust, the requirements of § 1926.1101 shall apply.

* * * * *

TABLE 1 TO § 1926.55—PERMISSIBLE EXPOSURE LIMITS FOR AIRBORNE CONTAMINANTS

Substance	CAS No.[d]	ppm[a]	mg/m[3] [b]	Skin designation *
* * * * *	*	*	*	*
Asbestos; see § 1926.1101.				
* * * * *	*	*	*	*
Talc (containing asbestos); use asbestos limit; see § 1926.1101.				
* * * * *	*	*	*	*
Tremolite, asbestiform; see § 1926.1101.				
* * * * *	*	*	*	*
* * * * *	*	*	*	*

[2] See Table 2 of this section.

[3] Use Asbestos Limit § 1926.1101.

[4] [Reserved]

[5] See Table 2 of this section for the exposure limit for any operations or sectors where the exposure limit in § 1926.1153 is stayed or is otherwise not in effect.

* An ''X'' designation in the ''Skin Designation'' column indicates that the substance is a dermal hazard.

[a] Parts of vapor or gas per million parts of contaminated air by volume at 25 °C and 760 torr.

[b] Milligrams of substance per cubic meter of air. When entry is in this column only, the value is exact; when listed with a ppm entry, it is approximate.

* * * * * * *

[d] The CAS number is for information only. Enforcement is based on the substance name. For an entry covering more than one metal compound, measured as the metal, the CAS number for the metal is given—not CAS numbers for the individual compounds.

* * * * *

■ 24. Revise § 1926.64 to read as follows:

§ 1926.64 Process safety management of highly hazardous chemicals.

For requirements regarding the process safety management of highly hazardous chemicals as it pertains to construction work, follow the requirements in 29 CFR 1910.119.

Subpart E—Personal Protective and Life Saving Equipment

■ 25. The authority citation for part 1926, subpart E, continues to read as follows:

Authority: 40 U.S.C. 3701 *et seq.;* 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 5–2002 (67 FR 65008), 5–2007 (72 FR 31160), 4–2010 (75 FR 55355), or 1–2012 (77 FR 3912), as applicable; and 29 CFR part 1911.

■ 26. Revise paragraph (c) of § 1926.104 to read as follows:

§ 1926.104 Safety belts, lifelines, and lanyards.

* * * * *

(c) Lifelines used on rock-scaling operations, or in areas where the lifeline may be subjected to cutting or abrasion, shall be a minimum of 7/8-inch wire core manila rope. For all other lifeline applications, a minimum of 3/4-inch manila or equivalent, with a minimum breaking strength of 5,000 pounds, shall be used.

* * * * *

Subpart G—Signs, Signals, and Barricades

■ 27. The authority citation for part 1926, subpart G, continues to read as follows:

Authority: 40 U.S.C. 333; 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), 5–2007 (72 FR 31159), 4–2010 (75 FR 55355), or 1–2012 (77 FR 3912), as applicable; and 29 CFR part 1911.

■ 28. Revise paragraph (g) of § 1926.200 to read as follows:

§ 1926.200 Accident prevention signs, devices, and tags.

* * * * *

(g) *Traffic control signs and devices.* (1) At points of hazard, construction areas shall be posted with legible traffic control signs and protected by traffic control devices.

(2) The design and use of all traffic control devices, including signs, signals, markings, barricades, and other devices, for protection of construction workers shall conform to Part 6 of the MUTCD (incorporated by reference, see § 1926.6).

* * * * *

■ 29. Revise paragraph (a) of § 1926.201 to read as follows:

§ 1926.201 Signaling.

(a) *Flaggers.* Signaling by flaggers and the use of flaggers, including warning garments worn by flaggers, shall conform to Part 6 of the MUTCD (incorporated by reference, see § 1926.6).

* * * * *

§ 1926.202 [Removed]

■ 30. Remove § 1926.202.

§ 1926.203 [Removed]

■ 31. Remove § 1926.203.

Subpart H—Materials Handling, Storage, Use, and Disposal

■ 32. The authority citation for part 1926, subpart H, continues to read as follows:

Authority: 40 U.S.C. 3701; 29 U.S.C. 653, 655, 657; and Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 4–2010 (75 FR 55355), or 1–2012 (77 FR 3912), as applicable. Section 1926.250 also issued under 29 CFR part 1911.

■ 33. Revise paragraph (a)(2) of § 1926.250 to read as follows:

§ 1926.250 General requirements for storage.

(a) * * *

(2)(i) The weight of stored materials on floors within buildings and structures shall not exceed maximum safe load limits.

(ii) Employers shall conspicuously post maximum safe load limits of floors within buildings and structures, in pounds per square foot, in all storage areas, except when the storage area is on a floor or slab on grade. Posting is not required for storage areas in all single-family residential structures and wood-framed multi-family residential structures.

* * * * *

Subpart S—Underground Construction, Caissons, Cofferdams and Compressed Air

■ 34. The authority citation for part 1926, subpart S, continues to read as follows:

Authority: 40 U.S.C. 3701; 29 U.S.C. 653, 655, 657; and Secretary of Labor's Orders 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 5–2007 (72 FR 31159), or 1–2012 (77 FR 3912), as applicable.

■ 35. Revise paragraph (k)(10) of § 1926.800 to read as follows:

§ 1926.800 Underground construction.

* * * * *

(k) * * *

(10)(i) Internal combustion engines, except diesel-powered engines on mobile equipment, are prohibited underground.

(ii) Mobile diesel-powered equipment used underground in atmospheres other than gassy operations:

(A) Shall comply with MSHA provisions in 30 CFR 57.5067; or

(B) If purchased on or before July 15, 2019, may alternatively comply with MSHA provisions under 30 CFR part 32 (revised as of July 1, 1996) (formerly Schedule 24), or be demonstrated by the employer to be fully equivalent to such MSHA-approved equipment, and be operated in accordance with that part.

(iii) For purposes of this paragraph (k)(10), when an applicable MSHA provision uses the term ''mine,'' use the phrase ''underground construction site.'' (Each brake horsepower of a diesel engine requires at least 100 cubic feet (2.832 m^3) of air per minute for suitable operation in addition to the air requirements for personnel. Some engines may require a greater amount of air to ensure that the allowable levels of carbon monoxide, nitric oxide, and nitrogen dioxide are not exceeded.)

* * * * *

Subpart W—Rollover Protective Structures; Overhead Protection

■ 36. The authority citation for part 1926, subpart W, is revised to read as follows:

Authority: 40 U.S.C. 3701; 29 U.S.C. 653, 655, 657; and Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), or 1–2012 (77 FR 3912), as applicable.

■ 37. Amend § 1926.1000 by revising the section heading and paragraphs (a) through (c) to read as follows:

§ 1926.1000 Scope.

(a) *Coverage.* This subpart applies to the following types of material handling equipment: All rubber-tired, self-propelled scrapers, rubber-tired front-end loaders, rubber-tired dozers, wheel-type agricultural and industrial tractors, crawler tractors, crawler-type loaders, and motor graders, with or without attachments, that are used in construction work. This subpart also applies to compactors and rubber-tired skid-steer equipment, with or without attachments, manufactured after July 15, 2019, that are used in construction work. This subpart does not apply to sideboom pipelaying tractors.

(b) *Equipment manufactured before* July 15, 2019. Material handling equipment described in paragraph (a) of this section (excluding compactors and rubber-tired skid-steer equipment) manufactured before July 15, 2019, shall be equipped with rollover protective

structures that meet the minimum performance standards prescribed in § 1926.1001(b), as applicable. Agricultural and industrial tractors used in construction shall be equipped with rollover protective structures that meet the minimum performance standards prescribed in § 1926.1002(b), as applicable. When overhead protection is provided on agricultural and industrial tractors, the overhead protection shall meet the minimum performance standards prescribed in § 1926.1003(b), as applicable.

(c) *Equipment manufactured on or after* July 15, 2019. Material handling machinery described in paragraph (a) of this section manufactured on or after July 15, 2019, shall be equipped with rollover protective structures that meet the minimum performance standards prescribed in § 1926.1001(c). Agricultural and industrial tractors used in construction shall be equipped with rollover protective structures that meet the minimum performance standards prescribed in § 1926.1002(c). When overhead protection is provided on agricultural and industrial tractors, the overhead protection shall meet the minimum performance standards prescribed in § 1926.1003(c).

* * * * *

■ 38. Section 1926.1001 is revised to read as follows:

§ 1926.1001 Minimum performance criteria for rollover protective structures for designated scrapers, loaders, dozers, graders, crawler tractors, compactors, and rubber-tired skid steer equipment.

(a) *General.* This section prescribes minimum performance criteria for roll-over protective structures (ROPS) for rubber-tired self-propelled scrapers; rubber-tired front end loaders and rubber-tired dozers; crawler tractors and crawler-type loaders, motor graders, compactors, and rubber-tired skid steer equipment.

(b) *Equipment manufactured before* July 15, 2019. For equipment listed in paragraph (a) of this section (excluding compactors and rubber-tired skid steer equipment) manufactured before July 15, 2019, the protective frames shall conform to the following Society of Automotive Engineers Recommended Practices as applicable: SAE J320a, Minimum Performance Criteria for Roll-Over Protective Structure for Rubber-Tired, Self-Propelled Scrapers; SAE J394, Minimum Performance Criteria for Roll-Over Protective Structure for Rubber-Tired Front End Loaders and Rubber-Tired Dozers; SAE J395, Minimum Performance Criteria for Roll-Over Protective Structure for Crawler Tractors and Crawler-Type Loaders; SAE J396, Minimum Performance Criteria for Roll-Over Protective Structure for Motor Graders; and SAE J397, Critical Zone Characteristics and Dimensions for Operators of Construction and Industrial Machinery, as applicable (each incorporated by reference, see § 1926.6), or comply with the consensus standard (ISO 3471:2008) listed in paragraph (c) of this section.

(c) *Equipment manufactured on or after* July 15, 2019. For equipment listed in paragraph (a) of this section manufactured on or after July 15, 2019, the protective frames shall meet the test and performance requirements of the International Organization for Standardization (ISO) standard ISO 3471:2008 Earth-Moving Machinery—Roll-over protective structures—Laboratory tests and performance requirements (incorporated by reference, see § 1926.6).

■ 39. Amend § 1926.1002 by:
■ a. Revising paragraphs (a) through (d);
■ b. Removing paragraphs (e) through (i);
■ c. Redesignating paragraph (j) as paragraph (e); and
■ d. Removing newly redesignated paragraph (e)(3) and paragraph (k).

The revisions read as follows:

§ 1926.1002 Protective frames (roll-over protective structures, known as ROPS) for wheel-type agricultural and industrial tractors used in construction.

(a) *General.* This section sets forth requirements for frames used to protect operators of wheel-type agricultural and industrial tractors used in construction work that will minimize the possibility of operator injury resulting from accidental upsets during normal operation. See paragraph (e) of this section for definitions of agricultural and industrial tractors.

(b) *Equipment manufactured before* July 15, 2019. For equipment manufactured before July 15, 2019, the protective frames shall meet the test and performance requirements of the Society of Automotive Engineers Standard J334a, Protective Frame Test Procedures and Performance Requirements and J168, Protective enclosures-test procedures and performance requirements, as applicable (incorporated by reference, see § 1926.6), or comply with the consensus standard (ISO 5700:2013) listed in paragraph (c) of this section.

(c) *Equipment manufactured on or after* July 15, 2019. For equipment manufactured on or after July 15, 2019, the protective frames shall meet the test and performance requirements of the International Organization for Standardization (ISO) standard ISO 5700:2013, Tractors for agriculture and forestry—Roll-over protective structures—static test method and acceptance conditions or ISO 3471:2008 Earth-Moving Machinery—Roll-over protective structures—Laboratory tests and performance requirements (incorporated by reference, see § 1926.6).

(d) *Overhead protection requirements.* For overhead protection requirements, see § 1926.1003.

* * * * *

■ 40. Section 1926.1003 is revised to read as follows:

§ 1926.1003 Overhead protection for operators of agricultural and industrial tractors used in construction.

(a) *General.* This section sets forth requirements for overhead protection used to protect operators of wheel-type agricultural and industrial tractors used in construction work that will minimize the possibility of operator injury resulting from overhead objects such as flying or falling objection, and from the cover itself in the event of accidental upset.

(b) *Equipment manufactured before* July 15, 2019. When overhead protection is provided on wheel-type agricultural and industrial tractors manufactured before July 15, 2019, the overhead protection shall be designed and installed according to the requirements contained in the test and performance requirements of Society of Automotive Engineers Standard J167, Protective Frame with Overhead Protection-Test Procedures and Performance Requirements, which pertains to overhead protection requirements (incorporated by reference, see § 1926.6) or comply with the consensus standard (ISO 27850:2013) listed in paragraph (c) of this section.

(c) *Equipment manufactured on or after* July 15, 2019. When overhead protection is provided on wheel-type agricultural and industrial tractors manufactured on or after July 15, 2019, the overhead protection shall be designed and installed according to the requirements contained in the test and performance requirements of the International Organization for Standardization (ISO) standard ISO 27850:2013, Tractors for agriculture and forestry—Falling object protective structures—Test procedures and performance requirements, which pertains to overhead protection requirements (incorporated by reference, see § 1926.6).

(d) *Site clearing.* In the case of machines to which § 1926.604 (relating to site clearing) also applies, the

overhead protection may be either the type of protection provided in § 1926.604, or the type of protection provided by this section.

Appendix A to Subpart W of Part 1926 [Removed]

■ 41. Remove appendix A to subpart W of part 1926.

Subpart Z—Toxic and Hazardous Substances

■ 42. The authority citation for part 1926, subpart Z, is revised to read as follows:

Authority: 40 U.S.C. 3704; 29 U.S.C. 653, 655, 657; and Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), 5–2007 (72 FR 31160), 4–2010 (75 FR 55355), or 1–2012 (77 FR 3912) as applicable; and 29 CFR part 1911.

Section 1926.1102 not issued under 29 U.S.C. 655 or 29 CFR part 1911; also issued under 5 U.S.C. 553.

■ 43. Amend § 1926.1101 by revising paragraph (m)(2)(ii)(C) and appendices D and E and I, sections III and IV(iii), to read as follows:

§ 1926.1101 Asbestos.

* * * * *

(m) * * *

(2) * * *

(ii) * * *

(C) A physical examination directed to the pulmonary and gastrointestinal systems, including a 14- by 17-inch or other reasonably-sized standard film or digital posterior-anterior chest X-ray to be administered at the discretion of the physician, and pulmonary function tests of forced vital capacity (FVC) and forced expiratory volume at one second (FEV_1). Classification of all chest X-rays shall be conducted in accordance with appendix E to this section.

* * * * *

BILLING CODE 4510–26–P

APPENDIX D TO § 1926.1101—MEDICAL QUESTIONNAIRES; MANDATORY

This mandatory appendix contains the medical questionnaires that must be administered to all employees who are exposed to asbestos above permissible exposure limit, and who will therefore be included in their employer's medical surveillance program. Part 1 of this appendix contains the Initial Medical Questionnaire, which must be obtained for all new hires who will be covered by the medical surveillance requirements. Part 2 includes the abbreviated Periodical Medical Questionnaire, which must be administered to all employees who are provided periodic medical examinations under the medical surveillance provisions of the standard in this section.

Part 1

INITIAL MEDICAL QUESTIONNAIRE

1. NAME_____

2. CLOCK NUMBER_____

3. PRESENT OCCUPATION_____

4. PLANT _____

5. ADDRESS_____

6. _____
(Zip Code)

7. TELEPHONE NUMBER_____

8. INTERVIEWER_____

9. DATE _____

10. Date of Birth _____
Month Day Year

11. Place of Birth _____

12. Sex
1. Male ___
2. Female ___

13. What is your marital status?
1. Single ___
2. Married ___
3. Widowed ___
4. Separated/ Divorced ___

14. (Check all that apply)
1. White ___
2. Black or African American ___
3. Asian ___
4. Hispanic or Latino ___
5. American Indian or Alaska Native ___
6. Native Hawaiian or Other Pacific Islander ___

15. What is the highest grade completed in school? _____
(For example 12 years is completion of high school)

OCCUPATIONAL HISTORY

16A. Have you ever worked full time (30 hours per week or more) for 6 months or more? 1. Yes ___ 2. No ___

IF YES TO 16A:

B. Have you ever worked for a year or more in any dusty job? 1. Yes ___ 2. No ___ 3. Does Not Apply ___

Specify job/industry _____ Total Years Worked ___

Was dust exposure: 1. Mild ___ 2. Moderate ___ 3. Severe ___

C. Have you ever been exposed to gas or chemical fumes in your work? 1. Yes ___ 2. No ___

Specify job/industry _____ Total Years Worked ___

Was exposure: 1. Mild ____ 2. Moderate ___ 3. Severe ___

D. What has been your usual occupation or job—the one you have worked at the longest?

1. Job occupation _____
2. Number of years employed in this occupation _____
3. Position/job title _____
4. Business, field or industry _____

(Record on lines the years in which you have worked in any of these industries, e.g. 1960-1969)

Have you ever worked:	YES	NO
E. In a mine?	_____	_____
F. In a quarry?	_____	_____
G. In a foundry?	_____	_____
H. In a pottery?	_____	_____
I. In a cotton, flax or hemp mill?....	_____	_____
J. With asbestos?	_____	_____

17. PAST MEDICAL HISTORY	YES	NO
A. Do you consider yourself to be in good health?	_____	_____
If "NO" state reason _____		
B. Have you any defect of vision?	_____	_____
If "YES" state nature of defect _____		
C. Have you any hearing defect?	_____	_____
If "YES" state nature of defect _____		

	YES	NO
D. Are you suffering from or have you ever suffered from:		
a. Epilepsy (or fits, seizures, convulsions)?	_____	_____
b. Rheumatic fever?	_____	_____
c. Kidney disease?	_____	_____
d. Bladder disease?	_____	_____
e. Diabetes?	_____	_____
f. Jaundice?	_____	_____

18. CHEST COLDS AND CHEST ILLNESSES

18A. If you get a cold, does it "usually" go to your chest? (Usually means more than 1/2 the time)	1. Yes ___ 2. No ___ 3. Don't get colds ___
19A. During the past 3 years, have you had any chest illnesses that have kept you off work, indoors at home, or in bed?	1. Yes ___ 2. No ___

IF YES TO 19A:

B. Did you produce phlegm with any of these chest illnesses?	1. Yes ___ 2. No ___ 3. Does Not Apply ___
C. In the last 3 years, how many such illnesses with (increased) phlegm did you have which lasted a week or more?	Number of illnesses ___ No such illnesses ___
20. Did you have any lung trouble before the age of 16?	1. Yes ___ 2. No ___

21. Have you ever had any of the following?

1A. Attacks of bronchitis?	1. Yes ___ 2. No ___

IF YES TO 1A:

B. Was it confirmed by a doctor? 1. Yes ___ 2. No ___ 3. Does Not Apply ___

C. At what age was your first attack? Age in Years ___ Does Not Apply ___

2A. Pneumonia (include bronchopneumonia)? 1. Yes ___ 2. No ___

IF YES TO 2A:

B. Was it confirmed by a doctor? 1. Yes ___ 2. No ___ 3. Does Not Apply ___

C. At what age did you first have it? Age in Years ___ Does Not Apply ___

3A. Hay Fever? 1. Yes ___ 2. No ___

IF YES TO 3A:

B. Was it confirmed by a doctor? 1. Yes ___ 2. No ___ 3. Does Not Apply ___

C. At what age did it start? Age in Years ___ Does Not Apply ___

22A. Have you ever had chronic bronchitis? 1. Yes ___ 2. No ___

IF YES TO 22A:

B. Do you still have it? 1. Yes ___ 2. No ___ 3. Does Not Apply ___

C. Was it confirmed by a doctor? 1. Yes ___ 2. No ___ 3. Does Not Apply ___

D. At what age did it start? Age in Years ___ Does Not Apply ___

23A. Have you ever had emphysema? 1. Yes ___ 2. No ___

IF YES TO 23A:

B. Do you still have it? 1. Yes ___ 2. No ___
3. Does Not Apply ___

C. Was it confirmed by a doctor? 1. Yes ___ 2. No ___
3. Does Not Apply ___

D. At what age did it start? Age in Years ___
Does Not Apply ___

24A. Have you ever had asthma? 1. Yes ___ 2. No ___

IF YES TO 24A:

B. Do you still have it? 1. Yes ___ 2. No ___
3. Does Not Apply ___

C. Was it confirmed by a doctor? 1. Yes ___ 2. No ___
3. Does Not Apply ___

D. At what age did it start? Age in Years ___
Does Not Apply ___

E. If you no longer have it, at what age did it stop? Age stopped ___
Does Not Apply ___

25. Have you ever had:

A. Any other chest illness? 1. Yes ___ 2. No ___

If yes, please specify _____

B. Any chest operations? 1. Yes ___ 2. No ___

If yes, please specify _____

C. Any chest injuries? 1. Yes ___ 2. No ___

If yes, please specify _____

26A. Has a doctor ever told 1. Yes ___ 2. No ___

you that you had heart trouble?

IF YES TO 26A:

B. Have you ever had treatment for heart trouble in the past 10 years? 1. Yes ___ 2. No ___ 3. Does Not Apply ___

27A. Has a doctor told you that you had high blood pressure? 1. Yes ___ 2. No ___

IF YES TO 27A:

B. Have you had any treatment for high blood pressure (hypertension) in the past 10 years? 1. Yes ___ 2. No ___ 3. Does Not Apply ___

28. When did you last have your chest X-rayed? (Year) ___ ___ ___ ___

29. Where did you last have your chest X-rayed (if known)? _____

What was the outcome? _____

FAMILY HISTORY

30. Were either of your natural parents ever told by a doctor that they had a chronic lung condition such as:	FATHER			MOTHER		
	1. Yes	2. No	3. Don't know	1. Yes	2. No	3. Don't know
A. Chronic Bronchitis?	___	___	___	___	___	___
B. Emphysema?	___	___	___	___	___	___
C. Asthma?	___	___	___	___	___	___
D. Lung cancer?	___	___	___	___	___	___
E. Other chest conditions?	___	___	___	___	___	___
F. Is parent currently alive?	___	___	___	___	___	___
G. Please Specify	___ Age if Living ___ Age at Death ___ Don't Know			___ Age if Living ___ Age at Death ___ Don't Know		
H. Please specify cause of death	_____			_____		

COUGH

31A. Do you usually have a cough? (Count a cough with first smoke or on first going out of doors. Exclude clearing of throat.) (If no, skip to question 31C.)	1. Yes ___	2. No ___
B. Do you usually cough as much as 4 to 6 times a day 4 or more days out of the week?	1. Yes ___	2. No ___
C. Do you usually cough at all on getting up or first thing in the morning?	1. Yes ___	2. No ___

D. Do you usually cough at all during the rest of the day or at night? — 1. Yes ___ 2. No ___

IF YES TO ANY OF ABOVE (31A, B, C, OR D), ANSWER THE FOLLOWING. IF NO TO ALL, CHECK "DOES NOT APPLY" AND SKIP TO NEXT PAGE

E. Do you usually cough like this on most days for 3 consecutive months or more during the year? — 1. Yes ___ 2. No ___ 3. Does not apply ___

F. For how many years have you had the cough? — Number of years ___ Does not apply ___

32A. Do you usually bring up phlegm from your chest? Count phlegm with the first smoke or on first going out of doors. Exclude phlegm from the nose. Count swallowed phlegm.) (If no, skip to 32C) — 1. Yes ___ 2. No ___

B. Do you usually bring up phlegm like this as much as twice a day 4 or more days out of the week? — 1. Yes ___ 2. No ___

C. Do you usually bring up phlegm at all on getting up or first thing in the morning? — 1. Yes ___ 2. No ___

D. Do you usually bring up phlegm at all on during the rest of the day or at night? — 1. Yes ___ 2. No ___

IF YES TO ANY OF THE ABOVE (32A, B, C, OR D), ANSWER THE FOLLOWING:

IF NO TO ALL, CHECK "DOES NOT APPLY" AND SKIP TO 33A

E. Do you bring up phlegm like this on most days for 3 consecutive months or more during the year? — 1. Yes ___ 2. No ___ 3. Does not apply ___

F. For how many years have you had trouble with phlegm? — Number of years ___ Does not apply ___

EPISODES OF COUGH AND PHLEGM

33A. Have you had periods or episodes of (increased*) cough and phlegm lasting for 3 weeks or more each year?
*(For persons who usually have cough and/or phlegm)
1. Yes ___ 2. No ___

IF YES TO 33A

B. For how long have you had at least 1 such episode per year?
Number of years ___
Does not apply ___

WHEEZING

34A. Does your chest ever sound wheezy or whistling

1. When you have a cold? 1. Yes ___ 2. No ___

2. Occasionally apart from colds? 1. Yes ___ 2. No ___

3. Most days or nights? 1. Yes ___ 2. No ___

B. For how many years has this been present?
Number of years ___
Does not apply ___

35A. Have you ever had an attack of wheezing that has made you feel short of breath? 1. Yes ___ 2. No ___

IF YES TO 35A

B. How old were you when you had your first such attack?
Age in years ___
Does not apply ___

C. Have you had 2 or more such episodes? 1. Yes ___ 2. No ___ 3. Does not apply ___

D. Have you ever required medicine or treatment for the(se) attack(s)? 1. Yes ___ 2. No ___ 3. Does not apply ___

BREATHLESSNESS

36. If disabled from walking by any condition other than heart or lung disease, please describe and proceed to question 38A.

Nature of condition(s)
_____
_____

37A. Are you troubled by shortness of breath when hurrying on the level or walking up a slight hill?

1. Yes ___ 2. No ___

IF YES TO 37A

B. Do you have to walk slower than people of your age on the level because of breathlessness?

1. Yes ___ 2. No ___
3. Does not apply ___

C. Do you ever have to stop for breath when walking at your own pace on the level?

1. Yes ___ 2. No ___
3. Does not apply ___

D. Do you ever have to stop for breath after walking about 100 yards (or after a few minutes) on the level?

1. Yes ___ 2. No ___
3. Does not apply ___

E. Are you too breathless to leave the house or breathless on dressing or climbing one flight of stairs?

1. Yes ___ 2. No ___
3. Does not apply ___

TOBACCO SMOKING

38A. Have you ever smoked cigarettes?
(No means less than 20 packs of cigarettes or 12 oz. of tobacco in a lifetime or less than 1 cigarette a day for 1 year.)

1. Yes ___ 2. No ___

IF YES TO 38A

B. Do you now smoke cigarettes (as of one month ago)

1. Yes ___ 2. No ___
3. Does not apply ___

C. How old were you when you first started regular cigarette smoking?	Age in years ___ Does not apply ___
D. If you have stopped smoking cigarettes completely, how old were you when you stopped?	Age stopped ___ Check if still smoking ___ Does not apply ___
E. How many cigarettes do you smoke per day now?	Cigarettes per day ___ Does not apply ___
F. On the average of the entire time you smoked, how many cigarettes did you smoke per day?	Cigarettes per day ___ Does not apply ___
G. Do or did you inhale the cigarette smoke?	1. Does not apply ___ 2. Not at all ___ 3. Slightly ___ 4. Moderately ___ 5. Deeply ___
39A. Have you ever smoked a pipe regularly? (Yes means more than 12 oz. of tobacco in a lifetime.)	1. Yes ___ 2. No ___

IF YES TO 39A

FOR PERSONS WHO HAVE EVER SMOKED A PIPE

B. 1. How old were you when you started to smoke a pipe regularly?	Age ___
2. If you have stopped smoking a pipe completely, how old were you when you stopped?	Age stopped ___ Check if still smoking pipe ___ Does not apply ___

C. On the average over the entire time you smoked a pipe, how much pipe tobacco did you smoke per week?	___ oz. per week (a standard pouch of tobacco contains 1 1/2 oz.) ___ Does not apply
D. How much pipe tobacco are you smoking now?	oz. per week ___ Not currently smoking a pipe ___
E. Do you or did you inhale the pipe smoke?	1. Never smoked ___ 2. Not at all ___ 3. Slightly ___ 4. Moderately ___ 5. Deeply ___

40A. Have you ever smoked cigars regularly? 1. Yes ___ 2. No ___

(Yes means more than 1 cigar a week for a year)

IF YES TO 40A

FOR PERSONS WHO HAVE EVER SMOKED A CIGAR

B. 1. How old were you when you started smoking cigars regularly?	Age ___
2. If you have stopped smoking cigars completely, how old were you when you stopped smoking cigars?	Age stopped ___ Check if still ___ Does not apply ___
C. On the average over the entire time you smoked cigars, how many cigars did you smoke per week?	Cigars per week ___ Does not apply ___
D. How many cigars are you smoking per week now?	Cigars per week ___ Check if not smoking cigars currently ___

E. Do or did you inhale the cigar smoke?	1. Never smoked ___ 2. Not at all ___ 3. Slightly ___ 4. Moderately ___ 5. Deeply ___

Signature _____ Date _____

Part 2

PERIODIC MEDICAL QUESTIONNAIRE

1. NAME_____

2. CLOCK NUMBER ___ ___ ___ ___ ___ ___ ___

3. PRESENT OCCUPATION_____

4. PLANT _____

5. ADDRESS _____

6. _____
(Zip Code)

7. TELEPHONE NUMBER _____

8. INTERVIEWER _____

9. DATE _____

10. What is your marital status? 1. Single ___ 2. Married ___ 3. Widowed ___ 4. Separated/ Divorced ___

11. OCCUPATIONAL HISTORY

11A. In the past year, did you work full time (30 hours per week or more) for 6 months or more? 1. Yes ___ 2. No ___

IF YES TO 11A:

11B. In the past year, did you work in a dusty job? 1. Yes ___ 2. No ___ 3. Does not Apply ___

11C. Was dust exposure: 1. Mild ___ 2. Moderate ___ 3. Severe ___

11D. In the past year, were you exposed to gas or chemical fumes in your work? 1. Yes ___ 2. No ___

11E. Was exposure: 1. Mild ___ 2. Moderate ___ 3. Severe ___

11F. In the past year, what was your:
1. Job/occupation? _____
2. Position/job title? _____

12. RECENT MEDICAL HISTORY

12A. Do you consider yourself to be in good health? Yes ___ No ___

If NO, state reason _____

12B. In the past year, have you developed:

	Yes	No
Epilepsy?	___	___
Rheumatic fever?	___	___
Kidney disease?	___	___
Bladder disease?	___	___
Diabetes?	___	___
Jaundice?	___	___
Cancer?	___	___

13. CHEST COLDS AND CHEST ILLNESSES

13A. If you get a cold, does it "usually" go to your chest? (usually means more than 1/2 the time)
1. Yes ___ 2. No ___
3. Don't get colds ___

14A. During the past year, have you had any chest illnesses that have kept you off work, indoors at home, or in bed?
1. Yes ___ 2. No ___
3. Does Not Apply ___

IF YES TO 14A:

14B. Did you produce phlegm with any of these chest illnesses?
1. Yes ___ 2. No ___
3. Does Not Apply ___

14C. In the past year, how many such illnesses with (increased) phlegm did you have which lasted a week or more?
Number of illnesses ___
No such illnesses ___

15. RESPIRATORY SYSTEM

In the past year have you had:

	Yes or No	Further Comment on Positive Answers
Asthma	_____	
Bronchitis	_____	
Hay Fever	_____	
Other Allergies	_____	

	Yes or No	Further Comment on Positive Answers
Pneumonia	_____	
Tuberculosis	_____	
Chest Surgery	_____	
Other Lung Problems	_____	
Heart Disease	_____	

Do you have:

	Yes or No	Further Comment on Positive Answers
Frequent colds	_____	
Chronic cough	_____	
Shortness of breath when walking or climbing one flight or stairs	_____	

Do you:

Wheeze	_____	
Cough up phlegm	_____	
Smoke cigarettes	_____	Packs per day ____ How many years ___

Date _____ Signature _____

Appendix E to § 1926.1101—Classification of Chest X-Rays—Mandatory

(a) Chest X-rays shall be classified in accordance with the Guidelines for the use of the ILO International Classification of Radiographs of Pneumoconioses (revised edition 2011) (incorporated by reference, see § 1926.6), and recorded on a classification form following the format of the CDC/NIOSH (M) 2.8 form. As a minimum, the content within the bold lines of this form (items 1 through 4) shall be included. This form is not to be submitted to NIOSH.

(b) All X-rays shall be classified only by a B-Reader, a board eligible/certified radiologist, or an experienced physician with known expertise in pneumoconioses.

(c) Whenever classifying chest X-ray film, the physician shall have immediately available for reference a complete set of the ILO standard format radiographs provided for use with the Guidelines for the use of the ILO International Classification of Radiographs of Pneumoconioses (revised edition 2011).

(d) Whenever classifying digitally-acquired chest X-rays, the physician shall have immediately available for reference a complete set of ILO standard digital chest radiographic images provided for use with the Guidelines for the Use of the ILO International Classification of Radiographs of Pneumoconioses (revised edition 2011). Classification of digitally-acquired chest X-rays shall be based on the viewing of images displayed as electronic copies and shall not be based on the viewing of hard copy printed transparencies of images.

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Appendix I to § 1926.1101—Medical Surveillance Guidelines for Asbestos, Non-Mandatory

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III. Signs and Symptoms of Exposure-Related Disease

The signs and symptoms of lung cancer or gastrointestinal cancer induced by exposure to asbestos are not unique, except that a chest X-ray of an exposed patient with lung cancer may show pleural plaques, pleural calcification, or pleural fibrosis, and may also show asbestosis (*i.e.,* small irregular parenchymal opacities). Symptoms characteristic of mesothelioma include shortness of breath, pain in the chest or abdominal pain. Mesothelioma has a much longer average latency period compared with lung cancer (40 years versus 15–20 years), and mesothelioma is therefore more likely to be found among workers who were first exposed to asbestos at an early age. Mesothelioma is a fatal disease.

Asbestosis is pulmonary fibrosis caused by the accumulation of asbestos fibers in the lungs. Symptoms include shortness of breath, coughing, fatigue, and vague feelings of sickness. When the fibrosis worsens, shortness of breath occurs even at rest. The diagnosis of asbestosis is most commonly based on a history of exposure to asbestos, the presence of characteristic radiologic abnormalities, end-inspiratory crackles (rales), and other clinical features of fibrosing lung disease. Pleural plaques and thickening may be observed on chest X-rays. Asbestosis is often a progressive disease even in the absence of continued exposure, although this appears to be a highly individualized characteristic. In severe cases, death may be caused by respiratory or cardiac failure.

IV. Surveillance and Preventive Considerations

As noted in section III of this appendix, exposure to asbestos has been linked to an increased risk of lung cancer, mesothelioma, gastrointestinal cancer, and asbestosis among occupationally exposed workers. Adequate screening tests to determine an employee's potential for developing serious chronic diseases, such as a cancer, from exposure to asbestos do not presently exist. However, some tests, particularly chest X-rays and pulmonary function tests, may indicate that an employee has been overexposed to asbestos increasing his or her risk of developing exposure related chronic diseases. It is important for the physician to become familiar with the operating conditions in which occupational exposure to asbestos is likely to occur. This is particularly important in evaluating medical and work histories and in conducting physical examinations. When an active employee has been identified as having been overexposed to asbestos measures taken by the employer to eliminate or mitigate further exposure should also lower the risk of serious long-term consequences.

The employer is required to institute a medical surveillance program for all employees who are or will be exposed to asbestos at or above the permissible exposure limit (0.1 fiber per cubic centimeter of air). All examinations and procedures must be performed by or under the supervision of a licensed physician, at a reasonable time and place, and at no cost to the employee.

Although broad latitude is given to the physician in prescribing specific tests to be included in the medical surveillance program, OSHA requires inclusion of the following elements in the routine examination:

(i) Medical and work histories with special emphasis directed to symptoms of the respiratory system, cardiovascular system, and digestive tract.

(ii) Completion of the respiratory disease questionnaire contained in appendix D of this appendix.

(iii) A physical examination including a chest X-ray and pulmonary function test that includes measurement of the employee's forced vital capacity (FVC) and forced expiratory volume at one second (FEV_1).

(iv) Any laboratory or other test that the examining physician deems by sound medical practice to be necessary.

The employer is required to make the prescribed tests available at least annually to those employees covered; more often than specified if recommended by the examining physician; and upon termination of employment.

The employer is required to provide the physician with the following information: A copy of the standard in this section (including all appendices to this section); a description of the employee's duties as they relate to asbestos exposure; the employee's representative level of exposure to asbestos; a description of any personal protective and respiratory equipment used; and information from previous medical examinations of the affected employee that is not otherwise available to the physician. Making this information available to the physician will aid in the evaluation of the employee's health in relation to assigned duties and fitness to wear personal protective equipment, if required.

The employer is required to obtain a written opinion from the examining physician containing the results of the medical examination; the physician's opinion as to whether the employee has any detected medical conditions that would place the employee at an increased risk of exposure-related disease; any recommended limitations on the employee or on the use of personal protective equipment; and a statement that the employee has been informed by the physician of the results of the medical examination and of any medical conditions related to asbestos exposure that require further explanation or treatment. This written opinion must not reveal specific findings or diagnoses unrelated to exposure to asbestos, and a copy of the opinion must be provided to the affected employee.

* * * * *

■ 44. Revise paragraph (l)(4)(ii)(C) of § 1926.1127 to read as follows:

§ 1926.1127 Cadmium.

* * * * *

(l) * * *

(4) * * *

(ii) * * *

(C) A 14 inch by 17 inch or other reasonably-sized standard film or digital posterior-anterior chest X-ray (after the initial X-ray, the frequency of chest X-rays is to be determined by the examining physician);

* * * * *

§ 1926.1129 [Removed and Reserved]

■ 45. Remove and reserve § 1926.1129.

§§ 1910.120, 1910.1001, 1910.1017, 1910.1018, 1910.1025, 1910.1026, 1910.1027, 1910.1028, 1910.1029, 1910.1030, 1910.1043, 1910.1044, 1910.1045, 1910.1047, 1910.1048, 1910.1050, 1910.1051, 1910.1052, 1910.1053, 1915.1001, 1915.1026, 1926.60, 1926.62, 1926.65, 1926.1101, 1926.1126, 1926.1127, and 1926.1153 [Amended]

■ 46. In addition to the amendments set forth above, in 29 CFR parts 1910, 1915, and 1926, remove words and punctuation from the following sections as follows:

Words and punctuation to remove	29 CFR		
	Part 1910	Part 1915	Part 1926
and social security number.	1910.120(f)(8)(ii)(A), 1910.1001(m)(3)(ii)(A), 1910.1017(m)(1), 1910.1025(d)(5), 1910.1025(n)(3)(ii)(A), 1910.1025, app. B, Sec. XII., 1910.1026(m)(4)(ii)(A), 1910.1028(k)(2)(ii)(A), 1910.1030(h)(1)(ii)(A), 1910.1043(k)(2)(ii)(A), 1910.1044(p)(2)(ii)(*a*), 1910.1047(k)(3)(ii)(A), 1910.1048(o)(3)(i), 1910.1048(o)(4)(ii)(D), 1910.1050(n)(5)(ii)(A), 1910.1051(m)(4)(ii)(A), 1910.1053(k)(3)(ii)(A).	1915.1001(n)(3)(ii)(A), 1915.1026(k)(4)(ii)(A).	1926.60(o)(5)(ii)(A), 1926.62(d)(5), 1926.62(n)(3)(ii)(A), 1926.62, app. B, Sec. XII., 1926.65(f)(8)(ii)(A), 1926.1101(n)(3)(ii)(A), 1926.1126(k)(4)(ii)(A), 1926.1127(d)(2)(iv), 1926.1153(j)(3)(ii)(A).
social security numbers,.	1910.1043(k)(1)(ii)(C), 1910.1048(o)(1)(vi).	.....	
social security number,.	1910.1028(k)(1)(ii)(D), 1910.1050(n)(3)(ii)(D), 1910.1052(m)(2)(ii)(F), 1910.1052(m)(2)(iii)(C).	.....	
, social security number.	1910.1001(m)(1)(ii)(F), 1910.1047(k)(2)(ii)(F), 1910.1050(n)(4)(ii)(A), 1910.1051(m)(2)(ii)(F), 1910.1052(m)(3)(ii)(A).	.....	
, social security number,.	1910.1018(q)(1)(ii)(D), 1910.1018(q)(2)(ii)(A), 1910.1025(n)(1)(ii)(D), 1910.1025(n)(2)(ii)(A), 1910.1026(m)(1)(ii)(F), 1910.1027(n)(1)(ii)(B), 1910.1027(n)(3)(ii)(A), 1910.1029(m)(1)(i)(*a*), 1910.1029(m)(2)(i)(*a*), 1910.1044(p)(1)(ii)(*d*), 1910.1045(q)(2)(ii)(D), 1910.1053(k)(1)(ii)(G).	1915.1001(n)(2)(ii)(F), 1915.1026(k)(1)(ii)(F).	1926.60(o)(4)(ii)(F), 1926.62(n)(1)(ii)(D), 1926.62(n)(2)(ii)(A), 1926.1101(n)(2)(ii)(F), 1926.1126(k)(1)(ii)(F), 1926.1127(n)(1)(ii)(B), 1926.1127(n)(3)(ii)(A), 1926.1153(j)(1)(ii)(G).

[FR Doc. 2019–07902 Filed 5–13–19; 8:45 am]

BILLING CODE 4510–26–P

FEDERAL REGISTER

Vol. 84 Tuesday,
No. 93 May 14, 2019

Part III

Federal Reserve System

12 CFR Part 243

Federal Deposit Insurance Corporation

12 CFR Part 381
Resolution Plans Required; Proposed Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 243

[Regulation QQ; Docket No. R–1660]

RIN 7100–AF47

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 381

RIN 3064–AE93

Resolution Plans Required

AGENCY: Board of Governors of the Federal Reserve System (Board) and Federal Deposit Insurance Corporation (Corporation).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board and the Corporation (together, the agencies) are inviting comment on a proposal to amend and restate the jointly issued regulation (the Rule) implementing the resolution planning requirements of section 165(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act). The proposal is intended to reflect improvements identified since the Rule was finalized in November 2011 and to address amendments to the Dodd-Frank Act made by the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA). The proposed amendments to the Rule include a proposal by the Board to establish risk-based categories for determining the application of the resolution planning requirement to certain U.S. and foreign banking organizations, consistent with section 401 of EGRRCPA, and a proposal by the agencies to extend the default resolution plan filing cycle, allow for more focused resolution plan submissions, and improve certain aspects of the Rule.

DATES: Comments should be received by June 21, 2019.

ADDRESSES:

Board: You may submit comments, identified by Docket No. R–1660 and RIN No. 7100–AF 47, by any of the following methods:

- *Agency Website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Email: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.
- All public comments will be made available on the Board's website at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays.

Corporation: You may submit comments, identified by RIN 3064–AE93, by any of the following methods:

- *Agency website: https://www.fdic.gov/regulations/laws/federal.* Follow the instructions for submitting comments on the Agency website.
- *Email: comments@fdic.gov.* Include RIN 3064–AE93 on the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/RIN 3064–AE93, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery/Courier:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. All comments received must include the agency name (FDIC) and RIN 3064–AE93.
- *Public Inspection:* All comments received, including any personal information provided, will be posted generally without change to *https://www.fdic.gov/regulations/laws/federal.*

FOR FURTHER INFORMATION CONTACT:

Board: Michael Hsu, Associate Director, (202) 452–4330, Catherine Tilford, Assistant Director, (202) 452–5240, and Kathryn Ballintine, Lead Financial Institution Policy Analyst, (202) 452–2555, Division of Supervision and Regulation; or Laurie Schaffer, Associate General Counsel, (202) 452–2272, Jay Schwarz, Special Counsel, (202) 452–2970, or Steve Bowne, Counsel, (202) 452–3900, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. For users of Telecommunications Device for the Deaf (TDD), (202) 263–4869.

Corporation: Lori J. Quigley, Deputy Director, Institutions Monitoring Group, *lquigley@fdic.gov;* Robert C. Connors, Associate Director, Large Bank Supervision Branch, *rconnors@fdic.gov,* Division of Risk Management Supervision; Alexandra Steinberg Barrage, Associate Director, Resolution Strategy and Policy, Office of Complex Financial Institutions, *abarrage@fdic.gov;* David N. Wall, Assistant General Counsel, *dwall@fdic.gov;* Pauline E. Calande, Senior Counsel, *pcalande@fdic.gov;* Celia Van Gorder, Supervisory Counsel, *cvangorder@fdic.gov,* or Dena S. Kessler, Counsel, *dkessler@fdic.gov,* Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

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I. Introduction

Section 165(d) of the Dodd-Frank Act and the jointly-issued Rule require certain financial companies (covered companies) to report periodically to the agencies their plans for rapid and orderly resolution under the U.S. Bankruptcy Code in the event of material financial distress or failure. The goal of the Dodd-Frank Act resolution planning process is to help ensure that a covered company's failure would not have serious adverse effects on financial stability in the United States. The Dodd-Frank Act and the Rule require a covered company to submit a resolution plan for review by the agencies. The resolution planning process requires covered companies to demonstrate that they have adequately assessed the challenges that their structures and business activities pose to a rapid and orderly resolution in the event of material financial distress or failure and that they have taken action to address those issues, including through the development of appropriate capabilities by those firms more likely to pose a risk to U.S. financial stability.

Among other requirements, the Rule requires each covered company to submit an annual resolution plan that includes a strategic analysis of the plan's components, a description of the range of specific actions the covered company proposes to take in resolution, and descriptions of the covered company's organizational structure, material entities, and interconnections and interdependencies. The Rule also requires that resolution plans include a confidential section that contains confidential supervisory and proprietary information submitted to the agencies, and a separate section that the agencies make available to the public.

II. Overview of the Resolution Planning Process to Date

The implementation of the Rule has been an iterative process aimed at strengthening the resolvability and resolution planning capabilities of covered companies. Since the finalization of the Rule in 2011, the agencies have reviewed multiple resolution plan submissions and have provided feedback and guidance to assist the covered companies in their development of subsequent resolution plan submissions. As part of the iterative process, the agencies have increasingly tailored feedback and guidance to take into account characteristics of covered companies including their size, business models, and risk profiles, and, for a foreign-based organization, the scope of operations in the United States. Based on these factors, the agencies have allowed certain covered companies to file resolution plans containing a subset of a full resolution plan's informational content.

The resolution plans' informational content and strategic analysis and the covered companies' capabilities to execute their resolution strategies have developed over time. As both the covered companies' submissions and the agencies' feedback have matured over several resolution plan cycles, the Rule's annual filing requirement has been a challenging constraint for both the agencies and covered companies and has become less necessary. The agencies have noted that the annual filing cycle does not always permit sufficient time for the review of resolution plan submissions and the development of meaningful feedback and guidance. The agencies also recognize that covered companies require time to understand and address the feedback and to incorporate any changes into their next resolution plan filings. In recognition of the challenges associated with an annual resolution plan filing, the agencies have extended plan filing deadlines over the last few submission cycles to provide at least two years between resolution plan filings.

The resolution planning process and other resolution-related regulatory changes have focused the covered companies on developing both resolution plan informational content, including strategic analysis, and the capabilities to improve their resolvability. Given the complexity of their operations, the U.S. global systemically important banks (U.S. GSIBs), in particular, have taken significant and material actions to address their resolvability. Over the past several years, these covered companies have enhanced their resolution strategies and addressed key resolution vulnerabilities by modelling resolution liquidity and capital needs, rationalizing legal structures, developing governance mechanisms to increase the likelihood of timely entry into resolution, and more clearly identifying and mitigating organizational dependencies, among other changes. Consistent with the agencies' feedback, firms have continued to build upon their respective capabilities to support their resolvability amidst ongoing changes in their businesses and in markets. If the agencies jointly determine that a resolution plan is not credible or would not facilitate an orderly resolution, the covered company must remedy the deficiencies in the resolution plan jointly identified by the agencies. If the covered company fails to adequately remedy the deficiencies within the time period specified by the agencies, the agencies may jointly impose more stringent prudential requirements on the company until the deficiencies are remedied.[1]

EGRRCPA revised the resolution planning requirement as part of the changes the law made to application of the enhanced prudential standards in section 165 of the Dodd-Frank Act. Specifically, EGRRCPA raised the $50 billion minimum asset threshold for general application of the resolution planning requirement to $250 billion in total consolidated assets, and provides the Board with discretion to apply the resolution planning requirement to firms with total consolidated assets of $100 billion or more, but less than $250 billion in total consolidated assets.[2] The threshold increase occurs in two stages. Immediately on the date of enactment, firms with total consolidated assets of less than $100 billion (for foreign banking organizations, $100 billion in total global assets) were no longer subject to the resolution planning requirement.

Eighteen months after the date of EGRRCPA's enactment, the threshold is raised to $250 billion in total consolidated assets. However, EGRRCPA provides the Board with the authority to apply resolution planning requirements to firms with $100 billion or more and less than $250 billion in total consolidated assets. Specifically, under section 165(a)(2)(C) of the Dodd-Frank Act, as revised by EGRRCPA, the Board may, by order or rule, apply the resolution planning requirement to any firm or firms with total consolidated assets of $100 billion (for foreign banking organizations, $100 billion in total global assets) or more.[3]

Consistent with section 401 of EGRRCPA, the Board has issued two separate proposals to revise the framework for determining the prudential standards that should apply to large U.S. banking organizations (domestic tailoring proposal)[4] and to large foreign banking organizations (FBO tailoring proposal[5] and together with the domestic tailoring proposal, the tailoring proposals). Among other provisions, the tailoring proposals identify distinct standards applicable to firms for the purpose of calibrating requirements. The tailoring categories established in the tailoring proposals[6] are as follows:

- Category I standards would apply to:
  - U.S. GSIBs,
- Category II standards would apply to:

[1] 12 U.S.C. 5365(d)(4), (5); 12 CFR 243.5(b), .6(a); 12 CFR 381.5(b), .6(a).

[2] EGRRCPA also provides that any bank holding company, regardless of asset size, that has been identified as a U.S. GSIB under the Board's U.S. GSIB surcharge rule shall be considered a bank holding company with $250 billion or more in total consolidated assets for purposes of the application of the resolution planning requirement. EGRRCPA section 401(f).

[3] 12 U.S.C. 5365(a); EGRRCPA section 401(a)(1)(B)(iii) (to be codified at 12 U.S.C. 5365(a)(2)(C)). *See also* EGRRCPA section 401(g).

[4] Prudential Standards for Large Bank Holding Companies and Savings and Loan Holding Companies (Proposed Rule), 83 FR 61408 (November 29, 2018).

[5] Prudential Standards for Large Foreign Banking Organizations; Revisions to Proposed Prudential Standards for Large Domestic Bank Holding Companies and Savings and Loan Holding Companies (April 8, 2019), *https://www.federalreserve.gov/newsevents/pressreleases/files/foreign-bank-fr-notice-1-20190408.pdf.*

[6] In the case of capital standards for foreign banking organizations, categories would apply based on the characteristics of the firm's U.S. intermediate holding company. That methodology is not relevant to this proposal.

○ U.S. firms that are not subject to Category I standards with (a) $700 billion or more in total consolidated assets, or (b) $100 billion or more in total consolidated assets that have $75 billion or more in the following risk-based indicator: Cross-jurisdictional activity, and

○ Foreign banking organizations with (a) $700 billion or more in combined U.S. assets,[7] or (b) $100 billion or more in combined U.S. assets that have $75 billion or more in the following risk-based indicator measured based on the combined U.S. operations: [8] Cross-jurisdictional activity,[9]

• Category III standards would apply to:

○ U.S. firms that are not subject to Category I or Category II standards with (a) $250 billion or more in total consolidated assets, or (b) $100 billion or more in total consolidated assets that have $75 billion or more in any of the following risk-based indicators: Nonbank assets, weighted short-term wholesale funding, or off-balance sheet exposure, and

○ Foreign banking organizations that are not subject to Category II standards with (a) $250 billion or more in combined U.S. assets, or (b) $100 billion or more in combined U.S. assets that have $75 billion or more in any of the following risk-based indicators measured based on the combined U.S. operations: Nonbank assets, weighted short-term wholesale funding, or off-balance sheet exposure, and

• Category IV standards would apply to:

○ U.S. firms with $100 billion or more in total consolidated assets that do not meet any of the thresholds specified for Categories I through III, and

○ Foreign banking organizations with $100 billion or more in combined U.S. assets that do not meet any of the thresholds specified for Categories II or III.

These categories form the basis for this proposal's framework for imposing resolution planning requirements, with adjustments where appropriate. The categories would also be used to tailor the content of the resolution planning requirements, taking into account covered companies' particular geographical footprints, operations, and activities.

III. Overview of the Resolution Plan Proposal

The agencies are proposing modifications to the Rule, which are intended to streamline, clarify, and improve the resolution plan submission and review processes and timelines. The agencies are seeking to achieve three key goals with the proposal: First, the proposal is intended to improve efficiency and balance burden by allowing more focused full resolution plan submissions, as well as periodic targeted resolution plan submissions for some filers, and reduced resolution plans for the remaining filers. Second, the proposal would establish by rule a biennial filing cycle for the U.S. GSIBs and balance burden by extending the filing cycle to every three years for all other filers. Third, the proposal would improve certain aspects of the Rule, such as the process for identifying critical operations, based on the agencies' experience in applying the Rule over time. These changes are expected to permit covered companies to build on previous work more effectively.

Specifically, the agencies' proposal:

• Divides the firms that have resolution planning requirements, including those identified by the Board pursuant to EGRRCPA, into groups of filers for plan content tailoring purposes,

• Enhances transparency and provides greater predictability by formalizing the current reduced resolution plan category,

• Establishes multi-year submission cycles for each group of filers,

• Introduces a new category of plans distinguished by informational content,

• Supersedes the existing tailored plan category, and

• Updates certain procedural elements of the Rule.

A. Identification of Firms Subject to the Resolution Planning Requirement and Filing Groups

1. Firms Subject to the Resolution Planning Requirement

Following EGRRCPA, three types of firms are statutorily subject to the resolution planning requirement:

• U.S. and foreign banking organizations with $250 billion or more in total consolidated assets,

• U.S. banking organizations identified as U.S. GSIBs, and

• Any designated nonbank financial companies that the Financial Stability Oversight Council (Council) has determined under section 113 of the Dodd-Frank Act should be supervised by the Board.

In addition and as discussed above, following EGRRCPA, the Board has the authority to apply the resolution planning requirement to firms with $100 billion or more and less than $250 billion in total consolidated assets.[10] The risk-based indicators established in the tailoring proposals to define firms subject to Category II and III standards are important indicia of a firm's complexity and serve to gauge the likely impact of a firm's failure on U.S. financial stability. Therefore, the Board proposes to use these risk-based indicators to identify those U.S. firms with total consolidated assets equal to $100 billion or more and less than $250 billion to be subject to a resolution planning requirement. Consistent with the domestic tailoring proposal, the Board is proposing to apply resolution planning requirements to U.S. bank holding companies with (a) total consolidated assets equal to $100 billion or more and less than $250 billion and (b) $75 billion or more in any of the following risk-based indicators: Cross-jurisdictional activity, nonbank assets, weighted short-term wholesale funding, or off-balance-sheet exposure. Consistent with the FBO tailoring proposal, the Board is proposing to apply resolution planning requirements to foreign banking organizations [11] with (a) total global assets equal to $100 billion or more and less than $250 billion, (b) combined U.S. assets equal to $100 billion or more, and (c) $75

[7] Combined U.S. assets means the sum of the consolidated assets of each top-tier U.S. subsidiary of the foreign banking organization (excluding any section 2(h)(2) company as defined in section 2(h)(2) of the Bank Holding Company Act (12 U.S.C. 1841(h)(2)), if applicable) and the total assets of each U.S. branch and U.S. agency of the foreign banking organization, as reported by the foreign banking organization on the FR Y–7Q.

[8] The combined U.S. operations of a foreign banking organization include any U.S. subsidiaries (including any U.S. intermediate holding company, which would reflect on a consolidated basis any U.S. depository institution subsidiaries thereof), U.S. branches, and U.S. agencies. In addition, for a foreign banking organization that is not required to form a U.S. intermediate holding company, combined U.S. operations refer to its U.S. branch and agency network and the U.S. subsidiaries of the foreign banking organization (excluding any section 2(h)(2) company as defined in section 2(h)(2) of the Bank Holding Company Act (12 U.S.C. 1841(h)(2), if applicable) and any subsidiaries of such U.S. subsidiaries.

[9] Cross-jurisdictional activity would be measured excluding transactions with non-U.S. affiliates.

[10] 12 U.S.C. 5365(a); EGRRCPA section 401(a)(1)(B)(iii) (to be codified at 12 U.S.C. 5365(a)(2)(C)). *See also* EGRRCPA section 401(g).

[11] For purposes of the Rule and the proposal, a foreign banking organization is a foreign bank that has a banking presence in the United States by virtue of operating a branch, agency, or commercial lending subsidiary in the United States or controlling a bank in the United States; or any company of which the foreign bank is a subsidiary. *See* 12 CFR 243.2(i); 12 CFR 381.2(i); § ____.2(n) of the proposal.

billion or more in any of the risk-based indicators measured based on combined U.S. operations.

In addition, the agencies propose to use the risk-based indicators to divide U.S. and foreign firms into groups for the purposes of determining the frequency and informational content of resolution plan filings. For a summary of the proposal's resolution plan filing categories, please see the Resolution Plan Filing Groups visual below.

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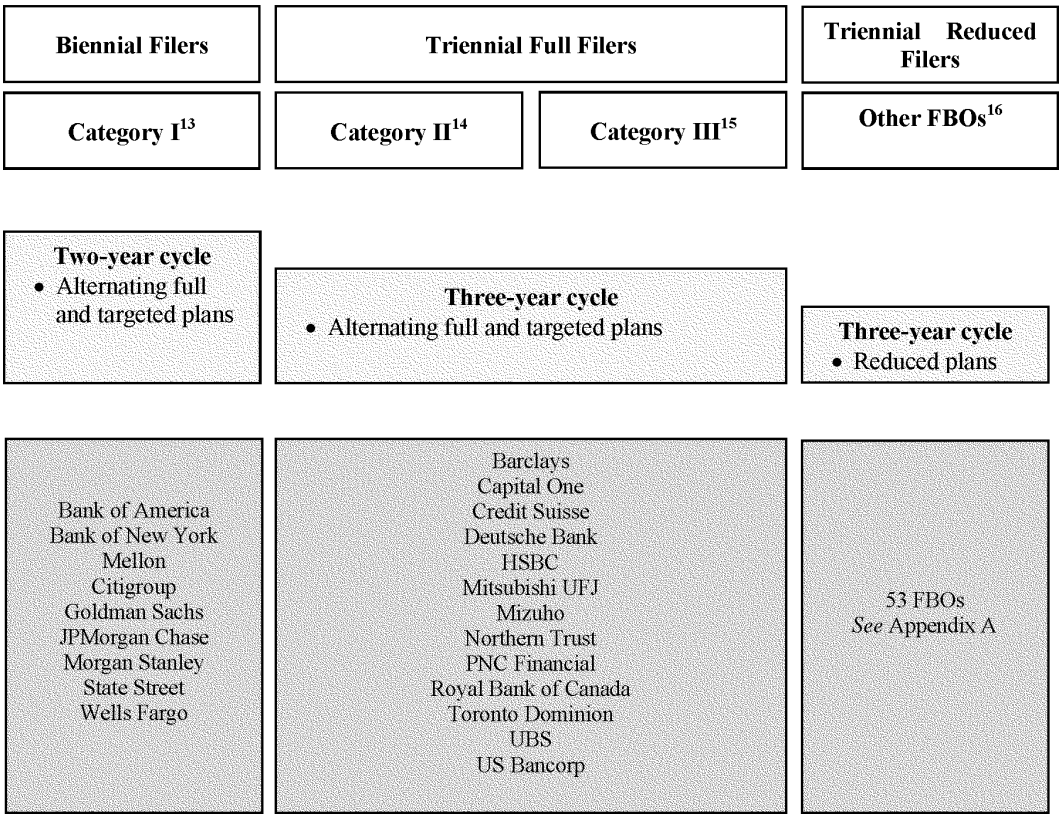
Resolution Plan Filing Groups[12]



BILLING CODE 6210–01–C

U.S. Covered Companies With $100 Billion or More and Less Than $250 Billion in Total Consolidated Assets

While the failure of some U.S. firms with $100 billion or more and less than $250 billion in total consolidated assets may not pose a significant threat to U.S. financial stability, the nature of an individual firm's particular activities and organizational footprint may present significant challenges to an orderly resolution. The thresholds and risk-based indicators identified in the categories above are designed to take these challenges and complexities into account. The Board is proposing to apply a uniform threshold of $75 billion for each of these risk-based indicators, based on the degree of concentration this amount would represent for each firm and the proportion of the risk factor among all U.S. firms with $100 billion or more in total consolidated assets that would be included by the threshold. In each case, a threshold of $75 billion would represent at least 30 percent and as much as 75 percent of total consolidated assets for U.S. firms with $100 billion or more and less than $250 billion in total consolidated assets. Setting the indicators at $75 billion would also ensure that firms that account for the vast majority—over 85 percent—of the total amount of each risk factor among all U.S. depository institution holding companies with $100 billion or more in total consolidated assets would be subject to resolution planning requirements that address the associated challenges these factors may pose to orderly resolution. This would facilitate consistent treatment of these challenges across firms.

[12] Please see the accompanying visual ''Proposed Resolution Plan Submission Dates'' for a visualization of proposed future submissions.

[13] Firms subject to Category I standards would be the U.S. GSIBs. Any future Council-designated nonbank would file full and targeted plans on a two-year cycle, unless the agencies jointly determine the firm should file full and targeted plans on a three-year cycle.

[14] Firms subject to Category II standards would be: (1) U.S. firms with (a) ≥$700b total consolidated assets; or (b) ≥$100b total consolidated assets with ≥$75b in cross-jurisdictional activity and (2) foreign banking organizations (FBOs) with (a) ≥$700b combined U.S. assets; or (b) ≥$100b combined U.S. assets with ≥$75b in cross-jurisdictional activity.

[15] Firms subject to Category III standards would be: (1) U.S. firms with (a) ≥$250b and <$700b total consolidated assets; or (b) ≥$100b total consolidated assets with ≥$75b in nonbank assets, weighted short-term wholesale funding (wSTWF), or off-balance sheet exposure and (2) FBOs with (a) ≥$250b and <$700b combined U.S. assets; or (b) ≥$100b combined U.S. assets with ≥$75b in nonbank assets, wSTWF, or off-balance sheet exposure.

[16] Other FBOs subject to resolution planning pursuant to statute are FBOs with ≥$250b global consolidated assets that are not subject to Category II or Category III standards.

For example, where a firm is heavily engaged in cross-jurisdictional activity, that activity increases operational complexity. It may be more difficult to resolve or unwind the firm's positions due to the multiple jurisdictions and regulatory authorities involved and potential legal or regulatory barriers to transferring financial resources across borders. The proposal would thus continue to apply resolution planning requirements to U.S. firms with $75 billion or more in cross-jurisdictional activity.

Similarly, bank holding companies with significant nonbank assets are more likely to be engaged in activities such as prime brokerage, or complex derivatives and capital markets activities. These activities can pose risks to the financial system and, if a firm has not engaged in planning to address these particular challenges, it is less likely the firm's resolution would proceed in an orderly manner without unduly impacting other firms. Moreover, certain of these activities may not be permitted in insured depository institutions because of their risk and tend to be conducted in legal entities that are resolved through bankruptcy, making the resolution planning requirement more relevant. The Board proposes to continue to apply resolution planning requirements to U.S. firms with this risk-based indicator. Continued resolution planning may increase the likelihood that any complex capital markets, securities, or derivatives activities could be resolved in an orderly manner.

In the 2008 financial crisis, it was apparent that liquidity stresses can lead to solvency challenges in short order if not addressed. Where a firm is particularly reliant on short-term funding sources, it may be more vulnerable to large-scale funding runs or ''fire sale'' effects on asset prices. The proposal would continue to apply resolution planning requirements to U.S. firms with higher levels of potential liquidity vulnerability, as measured by the firm's weighted short-term wholesale funding. Weighted short-term wholesale funding is a measure of liquidity vulnerability, as reliance on short-term, generally uninsured funding from highly sophisticated counterparties can create vulnerability to large-scale funding runs. Specifically, banking organizations that fund long-term assets with short-term liabilities from financial intermediaries like pension funds and money market mutual funds may need to rapidly sell less liquid assets to maintain their operations in a time of stress. This can lead to a sudden drop in asset prices that may, in turn, lead to rapid deterioration in the firm's financial condition and negatively impact broader financial stability. Through the resolution plan development process, the agencies expect that firms will develop and maintain robust liquidity measurement and risk management processes (including robust capabilities to measure and manage liquidity needs for those firms whose failure is more likely to pose a risk to U.S. financial stability), with the goal of leaving firms better positioned to manage liquidity stresses in the event of resolution, reducing negative effects on U.S. financial stability.

Where a firm's activities result in large off-balance sheet exposure, the firm may be more vulnerable to significant draws on capital and liquidity in times of stress. In the 2008 financial crisis, for example, vulnerabilities at individual firms were exacerbated by margin calls on derivative exposures, calls on commitments, and support provided to sponsored funds. Successful execution of a resolution strategy depends in part on there being sufficient capital and liquidity resources to execute the firm's strategy. The proposal would continue to apply resolution planning requirements to U.S. firms with this risk-based indicator. Through the resolution planning submission process, firms whose failure is more likely to pose risk to U.S. financial stability are expected to develop a more robust capacity to measure capital and liquidity needs for resolution and a strategy to deploy financial resources as needed, and to maintain the capabilities to measure capital and liquidity needs.

Question 1: What would be the advantages and disadvantages of having similar applicable resolution planning requirements for bank holding companies with total consolidated assets of $100 billion or more based on the proposed categories? What would be the advantages and disadvantages of having different standards?

Question 2: For purposes of the Board's discretion to apply the resolution planning requirement to U.S. firms with total consolidated assets of $100 billion or more, but less than $250 billion in total consolidated assets, what are the advantages and disadvantages of the proposed risk-based indicators? What different indicators should the Board use, and why?

Question 3: For purposes of the Board's discretion to apply the resolution planning requirement to U.S. firms with total consolidated assets of $100 billion or more, but less than $250 billion in total consolidated assets, at what level should the threshold for each indicator be set, and why? Commenters are encouraged to provide data supporting their recommendations.

Question 4: For purposes of the Board's discretion to apply the resolution planning requirements to U.S. firms with total consolidated assets of $100 billion or more, but less than $250 billion in total consolidated assets, the Board is considering whether Category II standards should apply based on a firm's weighted short-term wholesale funding, nonbank assets, and off-balance sheet exposure, using a higher threshold than the $75 billion that would apply for Category III standards, in addition to the thresholds discussed above based on asset size and cross-jurisdictional activity. For example, a firm could be subject to Category II standards if one or more of these indicators equaled or exceeded a level such as $100 billion or $200 billion. A threshold of $200 billion would represent at least 30 percent and as much as 80 percent of total consolidated assets for firms with between $250 billion and $700 billion in assets. If the Board were to adopt additional indicators for purposes of identifying firms that should be subject to Category II standards, at what level should the threshold for each indicator be set, and why? Commenters are encouraged to provide data supporting their recommendations.

When a firm does not have one of the risk-based indicators listed above and its total asset size is less than $250 billion, it is less likely that the firm's failure would present a risk of serious adverse effects on U.S. financial stability. In these instances, requiring a plan for rapid and orderly resolution in bankruptcy would impose burden without sufficient corresponding benefit. Accordingly, under the proposal, resolution planning requirements would no longer apply to U.S. firms with total consolidated assets of $100 billion or more and less than $250 billion that do not have any of the risk-based factors noted above. Based on their experience of reviewing resolution plans for firms in this category, the agencies have not identified deficiencies or shortcomings that required remediation.

Foreign-Based Covered Companies With $100 Billion or More and Less Than $250 Billion in Total Global Assets

Under the proposal, the Board is proposing to apply resolution planning requirements to foreign banking organizations with (a) total global assets equal to $100 billion or more and less

than $250 billion, (b) combined U.S. assets equal to $100 billion or more, and (c) $75 billion or more in any of the following risk-based indicators measured based on combined U.S. operations: Cross-jurisdictional activity, nonbank assets, weighted short-term wholesale funding, or off-balance-sheet exposure. For the reasons described above with respect to domestic firms and as further discussed below in the triennial full filers section, the Board is proposing to use the risk-based indicators to determine whether a foreign banking organization with a significant U.S. footprint should be subject to resolution planning.

Under the proposal, the Board, however, would no longer require resolution plan submissions from foreign banking organizations with total global assets equal to $100 billion or more and less than $250 billion where (a) the firm has combined U.S. assets below $100 billion or (b) the firm does not have $75 billion or more in any of the risk-based indicators measured based on combined U.S. operations. The majority of foreign banking organizations with total global assets less than $250 billion have limited U.S. activities and more limited interconnections with other U.S. market participants. Generally, such filers are likely to be foreign banking organizations with limited U.S. banking operations primarily conducted in a branch, which would not be resolved through bankruptcy. In the view of the Board, continuing to require even limited scope resolution plan submissions from this set of foreign banking organizations absent a significant amount of U.S. assets or any of the risk-based indicators does not seem warranted given the lower probability that the failure of these institutions would threaten U.S. financial stability.

Exiting Covered Company Status

The proposal would update the methodology for ascertaining when a firm ceases to be a covered company. With respect to a decrease in assets, under the proposal, a U.S. firm would cease to be a covered company when its total consolidated assets are less than $250 billion based on total consolidated assets for each of the four most recent calendar quarters (and it is not otherwise subject to Category II or Category III standards based on the risk-based indicators identified above). A foreign banking organization that files quarterly reports on Form FR Y–7Q similarly would be assessed on the basis of its total global assets for each of the four most recent calendar quarters. A foreign banking organization that files the Y–7Q report annually rather than quarterly would be assessed based on its total global assets over two consecutive years. The agencies would retain the discretion to jointly determine that a firm is no longer a covered company at an earlier time than it would be pursuant to its quarterly or annual reports. Firms that cease to be, or to be treated as, bank holding companies or that are de-designated by the Council for supervision by the Board are no longer covered companies and do not have any further resolution planning requirements as of the effective date of the applicable action unless there is a subsequent change to their status.

2. Filing Groups

The proposal divides covered companies required to file resolution plans into three groups of filers, commensurate with the potential impact of such companies' failure on U.S. financial stability. The proposal differentiates, for each group of filers, the resolution plan filing cycle length and information content requirements. The three groups of resolution plan filers are defined as: (a) Biennial filers; (b) triennial full filers; and (c) triennial reduced filers. Under the proposal, all covered companies would have a July 1 submission date, in place of the current division between July 1 and December 31. This change is intended to streamline the overall resolution planning framework.

Biennial Filers

The biennial filers in the proposal comprise firms subject to Category I standards, or U.S. GSIBs, which are the largest, most systemically important U.S. bank holding companies, as well as any nonbank financial company supervised by the Board that has not been jointly designated as a triennial full filer by the agencies. Any such designation of a nonbank financial company would be made taking into account the relevant facts and circumstances, including the degree of systemic risk posed by the particular covered company's failure. The failure of a firm in this group would pose the most serious threat to U.S. financial stability, and accordingly the proposal provides that this group be subject to the most stringent resolution planning requirements in terms of both submission frequency and information content. Under the methodology in the U.S. GSIB surcharge rule,[17] eight U.S. bank holding companies are currently identified as U.S. GSIBs,[18] and would therefore become subject to the proposed resolution planning requirements for this group.

For a biennial filer, the proposal would require submission of a resolution plan every two years, alternating between a full resolution plan, subject to the waiver option detailed below, and a targeted resolution plan, described below. Given that the U.S. GSIBs' resolution plans have matured over time and that these firms have taken meaningful steps to develop the foundational capabilities necessary for the implementation of their resolution strategies, the agencies have determined that a two-year filing cycle is appropriate.

Triennial Full Filers

The proposal would create a second filing group, triennial full filers, comprising firms subject to Category II or III standards, as well as any nonbank financial company supervised by the Board that has been designated as a triennial full filer by the agencies. As indicated above, the agencies' designation of a nonbank financial company's plan type would take into account the relevant facts and circumstances. Triennial full filers would include any of the following firms that do not meet the criteria to be biennial filers:

- U.S. firms with $250 billion or more in total consolidated assets,
- U.S. firms with total consolidated assets of $100 billion or more and less than $250 billion that have $75 billion or more in any of the following risk-based indicators: Cross-jurisdictional activity, nonbank assets, weighted short-term wholesale funding, or off-balance sheet exposure,
- Foreign banking organizations with $250 billion or more in combined U.S. assets, and
- Foreign banking organizations with $100 billion or more and less than $250 billion in combined U.S. assets that have $75 billion or more in any of the following risk-based indicators measured based on combined U.S. operations: Cross-jurisdictional activity, nonbank assets, weighted short-term wholesale funding, or off-balance sheet exposure.

Consistent with the tailoring proposals, the agencies would also consider the level of cross-jurisdictional activity, nonbank assets, weighted short-term wholesale funding, and off-balance

[17] 12 CFR part 217, subpart H.

[18] Bank of America Corporation; The Bank of New York Mellon Corporation; Citigroup, Inc.; The Goldman Sachs Group, Inc.; JPMorgan Chase & Co.; Morgan Stanley; State Street Corporation; and Wells Fargo & Company.

sheet exposure levels of a foreign banking organization's U.S. operations to determine the applicable filing group. The agencies propose to apply a uniform threshold of $75 billion for each of these risk-based indicators. A threshold of $75 billion would represent at least 30 percent and as much as 75 percent of the size of the U.S. operations of a foreign banking organization with combined U.S. assets equal to $100 billion or more and less than $250 billion. The Board proposed a $75 billion threshold for these indicators in the tailoring proposals. Setting the thresholds for these risk-based indicators at $75 billion would ensure that domestic banking organizations and the U.S. operations of foreign banking organizations that account for the vast majority—over 70 percent—of the total amount of each risk-based indicator would be subject to resolution planning requirements that account for the risks associated with these indicators.

For example, foreign banking organizations with U.S. operations that engage in significant cross-jurisdictional activity [19] may present increased operational complexities for resolution. Where multiple jurisdictions and regulatory authorities are involved, there could be further legal or regulatory barriers preventing transfer of financial resources across borders. The agencies propose that foreign banking organizations with $75 billion or more in cross-jurisdictional activity (*i.e.,* foreign banking organizations subject to Category II standards) be triennial full filers in order to understand how these firms would address these challenges in resolution.

Similarly, foreign banking organizations with significant nonbank assets may have increased operational complexity that could present challenges to resolution. Specifically, banking organizations with significant investments in nonbank subsidiaries are more likely to have complex corporate structures, inter-affiliate transactions, and funding relationships. In a resolution scenario, it may be more challenging to resolve these activities in an orderly manner without unduly impacting other firms.

Additionally, nonbank activities may involve a broader range of risks than those associated with banking activities, and can increase interconnectedness with other financial market participants, presenting increased risks to the financial system. If a firm is not engaged in planning to address these challenges, the firm's resolution may be more difficult. The distress or failure of a nonbank subsidiary could also be destabilizing to the U.S. operations of a foreign banking organization and to the foreign banking organization itself, causing counterparties and creditors to lose confidence in its global operations. The agencies propose that firms with this risk-based indicator be triennial full filers as resolution planning may increase the likelihood that capital markets, securities, or derivatives activities could be resolved in an orderly manner.

In the 2008 financial crisis, liquidity stresses resulted in solvency challenges for firms. Where the U.S. operations of a foreign banking organization is particularly reliant on short-term, generally uninsured funding from sophisticated counterparties such as investment funds, these operations may be more vulnerable to large-scale funding runs. In particular, foreign banking organizations with U.S. operations that fund long-term assets with short-term liabilities from financial intermediaries such as investment funds may need to rapidly sell less liquid assets to meet withdrawals and maintain their operations in a time of stress, which they may be able to do only at ''fire sale'' prices. Such asset fire sales can cause rapid deterioration in a foreign banking organization's financial condition and may adversely affect U.S. financial stability by driving down asset prices across the market. The agencies propose that firms with this risk-based indicator be triennial full filers since the development and maintenance of liquidity measurement and risk management may result in the firms being better positioned to manage liquidity stresses in the event of resolution.

Where a firm's activities result in large off-balance sheet exposure, the firm's customers or counterparties may be exposed to a risk of loss or suffer a disruption in the provision of services. The firm may also be more vulnerable to significant future draws on liquidity, particularly in times of stress. In the 2008 financial crisis, for example, vulnerabilities among the U.S. operations of foreign banking organizations were exacerbated by margin calls on derivative exposures and draws on commitments. Successful execution of a resolution strategy depends in part on there being sufficient capital and liquidity resources to execute the firm's strategy. The proposal would make firms with this risk-based indicator triennial full filers. Through the resolution planning submission process, firms may develop a more robust capacity to measure capital and liquidity needs for resolution and a strategy to deploy financial resources as needed.

Question 5: For purposes of defining resolution plan filing groups, what are the advantages and disadvantages of the proposed risk-based indicators? Should the agencies use different indicators, and if so, why?

Question 6: For purposes of defining resolution plan filing groups, at what level should the threshold for each indicator be set for foreign banking organization's U.S. operations, and why? Commenters are encouraged to provide data supporting their recommendations.

The failure of a triennial full filer could pose a threat to U.S. financial stability, though it is generally less likely than a firm in the biennial filers group. The proposal would therefore require these firms to submit resolution plans as triennial full filers; however, under the proposal, the filing cycle for triennial full filers would be one year longer than that of the biennial filers.

Specifically, the proposal would require triennial full filers to submit a resolution plan every three years, alternating between a full resolution plan, subject to the waiver option detailed below, and a targeted resolution plan, described below. The agencies have determined that this longer filing cycle is appropriate in light of the lesser degree of systemic risk posed by the failure of a firm in this group.

Notably, this filing group includes the foreign banking organizations that have received detailed guidance from the agencies.[20] The agencies believe that it is appropriate that these firms be part of the triennial full filing group and submit plans on the three-year filing cycle because the preferred outcome for each of these foreign banking organizations is a successful home country resolution using a single point of entry resolution

[19] Consistent with the domestic tailoring proposal, cross-jurisdictional activity for U.S. firms would be defined as the sum of cross jurisdictional assets and liabilities, as each is reported on the Banking Organization Systemic Risk Report (FR Y–15). Consistent with the FBO tailoring proposal, a foreign banking organization would measure cross-jurisdictional activity as the sum of the cross-jurisdictional assets and liabilities of its combined U.S. operations excluding intercompany liabilities and collateralized intercompany claims. As discussed in more detail in the FBO tailoring proposal, cross-jurisdictional activity would be measured excluding cross-jurisdictional liabilities to non-U.S. affiliates and cross-jurisdictional claims on non-U.S. affiliates to the extent that these claims are secured by eligible financial collateral.

[20] *See, e.g.,* Guidance for 2018 § 165(d) Annual Resolution Plan Submissions By Foreign-based Covered Companies that Submitted Resolution Plans in July 2015, *https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20170324a21.pdf.*

strategy, not the resolution strategy described in its U.S. resolution plan.

The filing group would also include non-bank financial companies designated by the Council for supervision by the Board that the agencies jointly designate to be triennial full filers. Given that the Council must determine that material financial distress at a nonbank financial company supervised by the Board could pose a threat to U.S. financial stability,[21] under the proposal, nonbank financial companies would automatically be deemed biennial filers. However, the agencies are retaining the discretion to obtain plans from these companies on a triennial basis based on the facts and circumstances of a particular company.

Triennial Reduced Filers

The proposal identifies a third group, triennial reduced filers, which consists of any covered company that is not subject to Category I, II, or III standards or is not a nonbank financial company supervised by the Board; that is, any covered company that is not a biennial or triennial full filer. The firms in this population do not pose the same risks to U.S. financial stability because they do not have the same size or complexity as the firms subject to Category I, II, or III standards. Accordingly, the proposal would apply less stringent resolution planning requirements to these firms. Triennial reduced filers would include foreign banking organizations with $250 billion or more in total global assets that are not subject to Category II or III standards.[22]

The proposal would require a firm that becomes a covered company and that is a triennial reduced filer to submit as its initial submission a full resolution plan, subject to the waiver option detailed below, and thereafter, every three years, a reduced resolution plan, described below. The agencies have determined that extending the filing cycle and reducing the informational requirements is appropriate given these firms' limited U.S. operations and smaller U.S. footprints.

Moving Filing Dates

As a covered company's resolution plan matures over time and as the risks presented by individual firms and the market change, a different filing cycle may be appropriate, commensurate with the risks posed by the failure of the firm to U.S. financial stability and the extent of current and relevant information available to support the agencies' advance planning efforts. Accordingly, the proposal would provide the agencies with flexibility to move filing dates when appropriate. The agencies would notify a covered company that has previously submitted a resolution plan at least 180 days prior to the new filing date. The agencies would notify a new covered company at least 12 months prior to the new filing date.

Question 7: Are the risk-based indicators and thresholds appropriate for identifying and distinguishing between groups of resolution plan filers (i.e., biennial, triennial full, and triennial reduced)?

Question 8: The agencies invite public comment on whether the proposed resolution plan submission cycle (i.e., U.S. GSIBs submitting resolution plans every two years, and other covered companies submitting resolution plans every three years) is appropriate. Would a longer or shorter interval between submissions be appropriate for any group of resolution plan filers?

B. Resolution Plan Content

1. Full Resolution Plan

The proposal would not generally modify the components or informational requirements of a full resolution plan.[23] Through numerous resolution plan submissions, the agencies and firms have gained familiarity with the format and content of the information currently required to be submitted pursuant to the Rule. The agencies also recognize the utility of the existing information requirements for full resolution plans. Focus on these items has facilitated resolution plan and resolvability improvements, particularly by the largest and most complex firms. Applicable guidance previously issued to specific full resolution plan filers concerning the content of their upcoming submissions would continue to apply to those individual firms.[24]

Question 9: The agencies invite comment on whether there are specific elements in § ____.4 (Informational content of a resolution plan) of the current Rule that should be omitted or modified.

2. Waiver

Through a covered company's repeated resolution plan submissions, certain aspects of its resolution plan may reach a steady state or become less material such that regular updates would not be useful to the agencies in their review of the plan. In acknowledgement of this, the proposal would continue to permit the agencies to waive certain informational content requirements for one or more firms on the agencies' joint initiative.[25] Waivers could be granted for one or more filing cycles.

The proposal also lays out a process for a covered company that has previously submitted a resolution plan to apply for a waiver of certain informational content requirements of a full resolution plan (waivers could not be applied for with respect to targeted or reduced resolution plans). Where the covered company would like to omit certain information from its next full resolution plan submission, the covered company would need to apply for the waiver at least 15 months in advance of the filing date.

In order to limit administrative burden and maximize transparency, covered companies would be limited to making one waiver request for each filing cycle, and the public section of the waiver request, containing the list of the requirements sought to be waived, would be made public. Waivers would be automatically granted on the date that is nine months prior to the plan it relates to is due if the agencies do not jointly deny the waiver prior to that date. The agencies may deny a waiver if, for example, they find that the information sought to be waived could be relevant to the agencies' review of the covered company's plan. The proposal provides that covered companies would not be able to request waivers for certain informational content requirements of the Rule. These include the core elements required in a targeted resolution plan, discussed below; information about changes the covered company has made to its resolution plan in response to a material change;

[21] 12 U.S.C. 5323.

[22] These foreign banking organizations would be required to submit resolution plans because they would have at least $250 billion in total global assets. *See* EGRRCPA section 401(a).

[23] The proposal would modify the requirements for a full resolution plan's executive summary by requiring a firm to include a description of material changes (as defined in the proposal) since the filing of the firm's previously submitted resolution plan and a description of the changes the firm has made to its resolution plan in response. The proposal would also require the executive summary to describe changes made to the firm's resolution plan, including its resolvability or resolution strategy or how the strategy is implemented, in response to feedback provided by the agencies, guidance issued by the agencies, or legal or regulatory changes. The requirements for targeted resolution plans would be consistent with these requirements.

[24] *E.g.,* Guidance for § 165(d) Resolution Plan Submissions by Domestic Covered Companies applicable to the Eight Largest, Complex U.S. Banking Organizations, 84 FR 1438, 1449 (February 4, 2019).

[25] The current Rule permits the agencies to grant exemptions for one or more of the informational requirements of the Rule. 12 CFR 243.4(k); 12 CFR 381.4(k). The proposal would supersede this provision with the new waiver provisions found in § ____.4(d)(6) of the proposal, which would provide similar authority.

information required in the public section of a full resolution plan; information about a deficiency or shortcoming that has not been adequately remedied or satisfactorily addressed; and information that is specifically required to be included in a resolution plan pursuant to section 165(d) of the Dodd-Frank Act.[26] The agencies note, however, that covered companies may be able to incorporate by reference to a previous plan submission certain information that would not be eligible for a waiver if the information meets the proposed requirements for incorporation by reference.

The agencies expect that waivers would be granted in appropriate circumstances. For example, waivers could be appropriate to reduce burden for informational content that may be of limited utility to the agencies, such as where the agencies have recently completed an in-depth review of a particular business line and are satisfied that they are in possession of current information relevant to a firm's ability to resolve that business line. More specifically, if the agencies have recently undertaken a comprehensive review of a firm's Payments, Clearing, and Settlement (PCS) activities, it may be appropriate to waive the requirement for that firm to submit information relevant to these activities in its next resolution plan submission. As another example, for a covered company that would currently be eligible to file a tailored resolution plan, the agencies could grant a waiver that would limit the firm's required plan content in a manner that is similar to the current tailored resolution plan provisions of the Rule.[27]

A firm would need to provide all information necessary to support its request, including an explanation of why approval of the request would be appropriate, why the information for which a waiver is sought would not be relevant to the agencies' review of the firm's resolution plan, and confirmation that the request meets the eligibility requirements for a waiver under the Rule (*i.e.,* that it is not a core element, not related to an identified deficiency that has not been adequately remedied, etc.). In order to ensure that the agencies have the information necessary to evaluate a waiver request, the proposal provides that covered companies would be required to explain why the information sought to be waived would not be relevant to the agencies' review of the covered company's next full resolution plan and why a waiver of the requirement would be appropriate. Failure to provide appropriate explanation or any information requested by the agencies in a timely manner could lead the agencies to deny a waiver request on the basis that insufficient explanation or a lack of information makes it impossible to determine that the information sought to be waived would not be relevant to their review of the resolution plan.

A full resolution plan should specify content omitted due to a waiver request that was granted.

Question 10: The agencies invite comment on the process identified for covered companies to request waivers. Does the proposed timeline provide sufficient time for covered companies to request waivers and for the agencies to review those requests? Should waivers be presumed to be granted unless the agencies jointly deny them or presumed to be denied unless the agencies jointly grant them? The agencies invite comment on the list of requirements with respect to which a waiver is not available. For example, are there any additional requirements under the proposal with respect to which a waiver should not be available? Should the public section of waiver requests be required to contain any additional information?

Question 11: The agencies invite comment on areas where the agencies should consider granting a waiver on the agencies' joint initiative in the next plan submissions of the covered companies. The agencies note they do not anticipate soliciting such feedback regularly or periodically in advance of future resolution plan submissions, but rather are inviting general comments on this topic to help inform the initial application of this proposed waiver mechanism.

3. Targeted Resolution Plan

The proposal would also amend the Rule to include a new type of resolution plan submission: A targeted resolution plan. As resolution plans develop and solidify over time, it is appropriate that certain information be refreshed or updated rather than resubmitted in full. The agencies are proposing the creation of the targeted resolution plan submission to strike the appropriate balance between providing a means to continue receiving updated information on structural or other changes that may affect a firm's resolution strategy while not requiring submission of information that remains largely unchanged since the previous submission. A targeted resolution plan would be a subset of a full resolution plan.

The targeted resolution plan elements are proposed to be as follows:

Certain Resolution Plan Core Elements: Each targeted resolution plan would include an update of the information required to be included in a full resolution plan regarding capital, liquidity, and the covered company's plan for executing any recapitalization contemplated in its resolution plan, including updated quantitative financial information and analyses important to the execution of the covered company's resolution strategy. For firms that have received detailed guidance from the agencies applicable to their upcoming submissions regarding capital, liquidity, and governance mechanisms, the targeted resolution plans should address these elements consistent with the applicable guidance.[28] A firm that has not received detailed guidance would be required to describe the capital and liquidity needed to execute the firm's resolution strategy consistent with § ____.5(c), (d)(1)(i), (iii), and (iv), (e)(1)(ii), (e)(2), (3), and (5), (f)(1)(v), and (g) of the proposal and, to the extent its resolution plan contemplates recapitalization, the covered company's plan for executing the recapitalization consistent with § ____.5(c)(5) of the proposal.

Material Changes: Each targeted resolution plan would include a description of material changes since

[26] 12 U.S.C. 5365(d)(1)(A)–(C).

[27] The current Rule's tailored resolution plan provisions allow covered companies with less than $100 billion in total nonbank assets that predominately operate through one or more insured depository institutions (*i.e.,* the company's insured depository institution subsidiaries comprise at least 85 percent of its total consolidated assets or, in the case of a foreign-based covered company, the assets of the U.S. insured depository institution operations, branches, and agencies comprise 85 percent or more of the company's U.S. total consolidated assets), to seek approval from the Board and the Corporation to submit a tailored resolution plan that focuses on the nonbank operations of the covered company.

[28] For example, a targeted resolution plan could discuss changes to a firm's methodology for modeling liquidity needs for its material entities during periods of financial stress, as well as changes to the firm's means for providing capital and liquidity to such entities as would be needed to successfully execute the firm's resolution strategy. These updates could, for example, involve changes to triggers upon which the firm relies to execute a recapitalization, including triggers based on capital or liquidity modeling. *See, e.g.,* Guidance for section 165(d) Resolution Plan Submissions by Domestic Covered Companies applicable to the Eight Largest, Complex U.S. Banking Organizations, 84 FR 1438, 1449 (February 4, 2019); *Guidance for 2018 § 165(d) Annual Resolution Plan Submissions By Foreign-based Covered Companies that Submitted Resolution Plans in July 2015, https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20170324a21.pdf.* The firms that received this guidance would be expected to address Resolution Capital Adequacy and Positioning (RCAP), Resolution Liquidity Execution Need (RLEN), and governance mechanisms as part of their updates concerning capital, liquidity and any plans for executing a recapitalization, respectively.

the filing of the covered company's previously submitted resolution plan and a description of the changes the covered company has made to its resolution plan in response.[29] A material change is defined to be any event, occurrence, change in conditions or circumstances, or other change that results in, or could reasonably be foreseen to have a material effect on the resolvability of the covered company, the covered company's resolution strategy, or how the covered company's resolution strategy is implemented. Such changes include the identification of a new critical operation or core business line; the identification of a new material entity or the de-identification of a material entity; significant increases or decreases in the business, operations, or funding of a material entity; or changes in the primary regulatory authorities of a material entity or the covered company on a consolidated basis.

Other such changes include material changes in operational and financial interconnectivity, both those that are intra-firm and external. Examples of such operational interconnectivity include reliance on affiliates for access to key financial market utilities or critical services, or significant reliance on the covered company by other firms for certain PCS services, including agent bank clearing or nostro account clearing, or government securities settlement services. Examples of such financial interconnectivity include a material entity becoming reliant on an affiliate as a source for funding or collateral, or the covered company becoming a major over-the-counter derivatives dealer.

Changes in Response to Regulatory Requirements, Guidance, or Feedback: Each targeted resolution plan would discuss changes made to the covered company's resolution plan, including its resolvability or resolution strategy or how the strategy is implemented, in response to feedback provided by the agencies, guidance issued by the agencies, or legal or regulatory changes.

Public Section: Each targeted resolution plan would contain a public section with the same content required of a full resolution plan's public section.

Targeted Areas of Interest: Each targeted resolution plan would discuss targeted areas of interest identified by the agencies that either an individual covered company or a group of similarly situated covered companies in a particular filing group [30] should address to enhance their resolution plan submissions. The agencies would notify covered companies of such targeted areas of interest at least 12 months prior to the applicable resolution plan submission date. Examples of a targeted area of interest could include the potential effects of Brexit on a covered company's resolvability because of material changes to booking practices or to the firm's organizational structure as a result of regulatory and market developments.

Question 12: The agencies invite comment on the proposed content of targeted resolution plans. Is it sufficiently clear what information is required to be included in a targeted resolution plan, including with respect to the proposed definition of the core elements? If not, how should the agencies clarify these requirements? Are there any information requirements that should be added to or removed from the proposed content of targeted resolution plans? Do the paragraphs of § ____.5 identified in the proposal's core elements definition identify the appropriate sections of the full resolution plan where core elements can be found?

4. Reduced Resolution Plan

The proposal would also codify the reduced resolution plan type. For foreign banking organizations with limited U.S. operations, the agencies have generally agreed, on a case-by-case basis, to limit the informational requirements of these firms' recent submissions to material changes and improvements to the firms' resolution strategies. The proposal would formalize the information requirements for this type of resolution plan and lay out the criteria (as discussed above) for firms to be permitted to file reduced resolution plans.

The proposal lays out the reduced resolution plan components as follows: A description of material changes experienced by the covered company since the filing of the covered company's previously submitted resolution plan and changes made to the strategic analysis that was presented in the firm's previously submitted resolution plan in response to these changes and changes made in response to feedback provided by the agencies, guidance issued by the agencies, or legal or regulatory changes.[31] Receiving updates of this information would permit the agencies to continue to monitor significant changes in structure or activities while appropriately focusing on the informational components of these firms' resolution plans.

For the public section of a reduced resolution plan, the proposal would modify the content currently required in the public section of all plans. The reduced resolution plan public section would be limited to the following elements: Names of material entities, a description of core business lines, the identities of principal officers, and a high-level description of the firm's resolution strategy, referencing the applicable resolution regimes for its material entities.

Question 13: The agencies invite comment on the proposed content of reduced resolution plans. Are there any information requirements that should be added to or removed from the proposed content of reduced resolution plans?

5. Tailored Plans

The Rule currently provides for a tailored plan, a means for certain bank-centric firms to request that their resolution plan submissions focus on nonbank activities that may pose challenges to executing the firm's resolution strategy. Pursuant to the Rule, firms must apply to the agencies to file a tailored plan rather than a full resolution plan every year that a submission is required.

The agencies propose to eliminate the tailored plan category. The introduction of the waiver process and the targeted resolution plan would provide effective substitutes for this type of focused submission in appropriate circumstances. Additionally, many of the covered companies currently eligible for a tailored plan either have ceased, post-EGRRCPA, to be subject to the resolution plan submission requirement or would become triennial reduced filers, which would focus their future plan submissions on material changes.

Question 14: The agencies invite comment on whether the tailored plan category should be retained.

[29] Section 165(d)(1) of the Dodd-Frank Act requires that certain information be periodically reported to the agencies in covered companies' resolution plans (required information). 12 U.S.C. 5365(d)(1). If a covered company does not include in its targeted resolution plan a description of changes to the required information from its previously submitted plan, the required information that it included in its previously submitted plan would be incorporated by reference into its targeted resolution plan.

[30] *E.g.,* U.S. GSIBs, or foreign banking organizations that are triennial full filers.

[31] As described above, section 165(d)(1) of the Dodd-Frank Act mandates that required information be included in covered companies' resolution plans. 12 U.S.C. 5365(d)(1). If a triennial reduced filer does not include in its reduced resolution plan a description of changes to the required information from its previously submitted plan, the required information that it included in its previously submitted plan would be incorporated by reference into its reduced resolution plan.

C. Critical Operations Methodology and Reconsideration Process

The current Rule provides for critical operations to be identified by the firms or at the agencies' joint direction. In 2012, the agencies established a process and methodology for jointly identifying critical operations for both U.S. and foreign-based covered companies. The agencies assessed the significance of activities and markets with respect to U.S. financial stability in the following four areas: Capital markets; funding and liquidity; retail and commercial banking; and payments, clearing, and settlement. The agencies then considered the significance of individual covered companies as a provider or participant in those activities and markets using criteria such as market share data, level of market concentration, size of market activity, and ease of substitutability.[32]

The agencies' original critical operations identifications from 2012 have remained largely unchanged. As covered companies have made changes to their operating structures, realigned business entities, and adapted to changing market conditions, some have submitted ad hoc requests to the agencies seeking reconsideration of certain critical operations identifications. The agencies have reviewed these requests and communicated their decisions to firms on a rolling basis.

Given that both firms and markets continually evolve and change, the agencies have determined that a periodic, comprehensive review of critical operations identifications would help to ensure that resolution planning remains appropriately focused on key areas.

The proposal would establish processes for firms and the agencies to identify particular operations of covered companies as critical operations and to rescind prior critical operations identifications made by the agencies. In addition, the proposal would specify a process for a covered company to request reconsideration of operations previously identified by the agencies as critical, and require that covered companies notify the agencies if the covered company ceases to identify an operation as a critical operation. The intended result would be a process that yields a relatively stable population of identified critical operations while allowing for recognition of new, or changes to existing, markets or activities as well as changes to individual firms' participation in those markets or activities, among other factors. The agencies expect that the proposed processes would cause covered companies' resolution plans to be more clearly focused on the actions a covered company would need to take to facilitate a rapid and orderly resolution.[33]

1. Changes to Definitions

The agencies are proposing to modify the definition of ''critical operations'' to reflect the proposed requirements and processes in new § ____.3. Under the proposal, ''critical operations'' means those operations, including associated services, functions, and support, the failure or discontinuance of which would pose a threat to the financial stability of the United States. In addition, the proposal would include a new definition, ''identified critical operations,'' to clarify that critical operations can be identified by either the covered company or jointly identified by the agencies and that until such an operation has been identified by either method, the operation does not need to be addressed as a critical operation in a resolution plan.

2. Identification of Critical Operations by Covered Companies

In general, covered companies have developed processes within their broader resolution planning framework to identify critical operations. The proposal would require a subset of covered companies, specifically biennial filers and triennial full filers (*i.e.,* generally those with currently identified critical operations) to maintain a process for the identification of critical operations on a scale that reflects the nature, size, complexity, and scope of their operations.

The proposal would require that the firm's process include a methodology for identifying critical operations. Specifically, the methodology must first identify and assess economic functions engaged in by the firm. These economic functions may include the core banking functions of deposit taking; lending; payments, clearing and settlement; custody; wholesale funding; and capital markets and investment activities. In general, an economic function is most likely to present a critical operation of the firm where both (a) a market or activity engaged in by the firm is significant to U.S. financial stability and (b) the firm is a significant provider or participant in such a market or activity. Factors relevant for determining whether a market or activity is significant to U.S. financial stability, or whether a firm is a significant provider or participant in such a market or activity, may include substitutability, market concentration, interconnectedness, and the impact of cessation. The firm's analysis should focus on the significance of the activity to U.S. financial stability, not whether a particular activity is significant for a foreign parent or other foreign affiliates of the firm.[34] The process undertaken by a firm in completing such an analysis should be commensurate with the nature, size, complexity, and scope of its operations.[35]

The agencies propose that the covered company's critical operations review process occur at least as frequently as its resolution plan submission cycle and that the review process be documented in the covered company's corporate governance policies and procedures.[36]

The proposal lays out a process for a covered company that has previously submitted a resolution plan but does not currently have an identified critical operation under the Rule to apply for a waiver of the requirement to have a process and methodology to identify critical operations. Where the covered company would like a waiver of the requirement with respect to its next plan submission, the covered company would need to apply for the waiver at least 15 months in advance of the filing date for that resolution plan.

In its waiver request, the covered company must explain why a waiver of the requirement would be appropriate, including an explanation of why the process and methodology are not likely to identify any critical operation given its business model, operations, and organizational structure. For example, for a covered company that has not experienced any significant changes in its business, operations, or organizational structure since its most recent resolution plan, a waiver request that so states, with reasonable supporting detail, could provide sufficient information for the agencies to evaluate the request. Alternatively, if

[32] For example, a critical operation of a covered company would include an operation, such as a clearing, payment, or settlement system, that plays a role in the financial markets for which other firms lack the expertise or capacity to provide a ready substitute.

[33] *See* 12 CFR 243.4(c)(1)(ii); 12 CFR 381.4(c)(1)(ii); § ____.5(c)(1)(ii) of the proposal.

[34] Where a firm's operation, such as U.S. dollar deposit taking, is significant to the firm, but the failure or discontinuance of that activity would not pose a threat to the financial stability of the United States, that operation would not be an identified critical operation under the proposal.

[35] For a foreign firm, the critical operations identification process and methodology should be commensurate with the nature, size, complexity, and scope of its U. S. operations.

[36] *See* 12 CFR 243.4(d)(1)(i); 12 CFR 381.4(d)(1)(i); § ____.5(d)(1)(i) of the proposal.

one of a covered company's operations gained significant market share since it submitted its most recent resolution plan submission, the waiver request should include this information, a description of the operation, and a discussion of why this change would not warrant the development of a methodology for identifying critical operations.

Failure to provide appropriate information jointly requested by the agencies in a timely manner could lead the agencies to deny a waiver request on the basis that a lack of information makes it impossible to determine that the information sought to be waived would not be relevant to their review of the resolution plan.

The public section of the waiver request, describing that a waiver of the requirement is being sought, would be made public. Waivers would be automatically granted on the date that is nine months prior to the date that the resolution plan it relates to is due if the agencies do not jointly deny the waiver prior to that date.

Question 15: If granted, how long should the waiver from the critical operations methodology be valid? For example, should the waiver be valid for each submission cycle (e.g., three years) or for a full resolution plan submission and the following targeted plan submission (e.g., six years)? In addition, should the waiver become invalid upon the occurrence of certain events (e.g., the occurrence of a material change (as defined in the proposal))?

Question 16: The agencies propose that any critical operations identification process undertaken by a firm be commensurate with the nature, size, complexity, and scope of its operations, and that a firm that does not currently have an identified critical operation be permitted to seek a waiver from the requirement to have such a process. Are there benefits from having firms that do not have currently identified critical operations develop and maintain a process for identifying critical operations, or should these firms be able to request a waiver from the proposed critical operations identification process requirement? Should a firm that moves to a more stringent category (e.g., from being a triennial reduced filer to being a firm that is subject to Category II standards and, accordingly, a triennial full filer) and does not have a currently identified critical operation be permitted to seek a waiver from the critical operations identification process requirement?

3. Identification and Rescission of Critical Operations by the Agencies; Periodic Agency Review

Under the proposal, the agencies would be able to identify a critical operation or rescind a prior identification at any time. In addition, the proposal would provide for the agencies to review all identified critical operations and the operations of covered companies for consideration as critical operations at least every six years. In connection with these reviews, the agencies would jointly identify any additional critical operation or rescind any prior identification if they jointly find that the operation is not a critical operation.

4. Requests for Reconsideration

Under the proposal, a covered company would be able to request that the agencies reconsider a critical operation identification made jointly by the agencies by submitting a written request that presents the company's arguments, all relevant information that the company expects the agencies to consider, and, if applicable, a description of the material differences between the current request and the most recent prior reconsideration request for the same critical operation. A covered company would be required to submit a request for reconsideration sufficiently before its next resolution plan to provide the agencies with a reasonable period to reconsider the identification. The agencies would generally complete their reconsideration no later than 90 days after receipt of all requested information from the covered company.

5. De-Identification by Covered Companies of Self-Identified Critical Operations

Under the proposal, a covered company would be required to notify the agencies if the covered company ceases to identify an operation as a critical operation. The notice would be required to explain why the firm previously identified the operation as a critical operation and why the firm no longer identifies the operation as a critical operation. The notice is meant to provide the agencies with sufficient time to consider whether to jointly identify the operation as a critical operation, if they have not already done so. Accordingly, a covered company would generally be required to continue to treat an operation as a self-identified critical operation in any resolution plan the covered company is required to submit within 12 months of the notification.

Question 17: How often should the agencies conduct a new identification process and review existing critical operations identifications for each covered company? Should, for example, the frequency of the agencies' critical operations identification review processes occur on the same cycle with the agencies' review of covered companies' full resolution plan submission?

Question 18: What particular information should the agencies consider in addressing a covered company's rescission request under the Rule?

Question 19: The agencies invite comment on all aspects of the proposal for firms to establish and implement a process designed to identify their critical operations. Are the elements of the critical operations identification methodology sufficiently clear? For example, is it sufficiently clear how a covered company should analyze the significance to U.S. financial stability of the markets and activities through which it engages in economic functions? Should this requirement apply to a broader or narrower set of firms? For example, should the requirement apply only to global systemically important bank holding companies? Should firms' reviews of their critical operations designations be required to occur on a more or less frequent basis? In what ways, if any, do the proposed requirements differ from covered companies' current processes for identifying their critical operations?

D. Clarifications to the Rule

1. Resolution Strategy for Foreign-Based Covered Companies

The Rule does not specify the assumptions a foreign banking organization should make with respect to how resolution actions it takes outside of the United States should be addressed in its resolution plan. This issue is particularly acute for a foreign banking organization that expects to undertake a single point of entry resolution strategy in its home country. If such a strategy were to be successfully undertaken, a firm's U.S. operations would not need to enter resolution, which conflicts with the statutory requirement that a covered company present a plan for its orderly resolution under the U.S. Bankruptcy Code. Therefore, the proposal would clarify that covered companies that are foreign banking organizations should not assume that the covered company takes resolution actions outside of the United States that would eliminate the need for any U.S. subsidiaries to enter into

resolution proceedings. This is consistent with guidance that the agencies have previously provided.[37]

2. Covered Company in Multi-Tier Foreign Banking Organization Holding Companies

The definition of covered company in the Rule includes the top tier entity in a multi-tier holding company structure of any foreign bank or company that is a bank holding company or is treated as a bank holding company under section 8(a) of the International Banking Act of 1978.[38] The top tier holding company of certain foreign banks is a government, sovereign entity, or family trust. There is no benefit to the agencies in obtaining resolution plan information concerning such types of entities. To date, the agencies have addressed these issues on a case-by-case basis and have identified alternate filers in the corporate structure, such as the entity in the structure that is directly supervised by the Board. In the interest of clarity, the proposal includes a formal process by which the agencies would identify a subsidiary in a multi-tiered FBO holding company structure to serve as the covered company that would be required to file the resolution plan.

3. Removal of the Incompleteness Concept and Related Review

The Rule includes a requirement that the agencies review a resolution plan within 60 days of submission and jointly inform the covered company if the plan is informationally incomplete or additional information is required to facilitate review of the plan.[39] This process led to a limited number of resubmissions in 2012 when the first resolution plans were submitted, but has not been used since. As resolution plans have developed over time, the agencies have not found that this requirement facilitates their review of the resolution plans and are therefore proposing to remove it.

Question 20: The agencies invite comment on whether the incompleteness concept and related review should be retained.

4. Assessment of New Covered Companies

The Rule provides that covered company status for a foreign banking organizations may be based on annual or quarterly reports based on availability of such reports but does not clarify whether firms that file quarterly reports would be assessed for covered company status on a quarterly basis or annually at the same time firms that report annually are assessed. The proposal would clarify that a foreign banking organization's status as a covered company would be assessed quarterly for foreign banking organizations that file the Federal Reserve's Form FR Y–7Q (FR Y–7Q) on a quarterly basis and annually for foreign banking organizations that file the Y–7Q on an annual basis only. In each case, the assessment would be based on total consolidated assets as averaged over the preceding four calendar quarters as reported on the FR Y–7Q.

In addition, the proposal would also address the process for assessing a firm whose assets have grown due to a merger, acquisition, combination, or similar transaction for covered company status. Under these circumstances, the agencies would have the discretion to alternatively consider, to the extent and in the manner the agencies jointly consider appropriate, the relevant assets reflected on the one or more of the four most recent reports of the pre-combination entities (the FR Y–9C in the case of a U.S. firm and the FR Y–7Q in the case of a foreign banking organization). For example, if Firm A, which previously reported total consolidated assets of $175 billion over the preceding four calendar quarters, acquired Firm B, which previously reported total consolidated assets of $80 billion over the same preceding four calendar quarters, the agencies could determine that immediately following the closing of the transaction, Firm A is a covered company. Similarly, if Firm A acquired assets from Firm B, which assets had been reported over the preceding four calendar quarters to have a value of $80 billion, the agencies could determine that Firm A became a covered company as of the closing of the acquisition.

5. Timing of New Filings, Firms That Change Filing Categories, and Notices of Extraordinary Events

To address the new filing cycles for biennial, triennial full, and triennial reduced filers, the proposal includes related modifications to the timing of the initial submission for new filers. When a firm becomes a covered company, the proposal provides that its first submission would be a full resolution plan and that the initial plan would be due the next time its filing group (biennial, triennial full, or triennial reduced) submits resolution plans as long as the submission deadline is at least 12 months after the time the firm becomes a covered company. For example, if a firm becomes a triennial full filer, its first resolution plan would be due when the triennial full filing group next submits resolution plans, so long as such date is at least 12 months after the firm becomes a triennial full filer. If the triennial full filers' next plan submission is a targeted resolution plan, the new filer would still need to submit a full resolution plan as its initial plan. After its initial plan, subsequent plans would be of the same type (full or targeted) as other triennial full filers. The proposal would also include a reservation of authority, however, permitting the agencies to require the initial plan earlier than the date of the filing group's next filing, so long as the submission deadline would be at least 12 months from the date on which the agencies jointly determined to require the covered company to submit its resolution plan.

Similarly, if a covered company changes groups (*e.g.,* a triennial reduced filer becomes a triennial full filer or a triennial full filer becomes a triennial reduced filer), the proposal specifies the timing and type of resolution plan it would be required to next submit:

- If the resolution plan submission deadline for the covered company's new group were the same as the prior group, the covered company would be required to submit a resolution plan by the deadline. If the deadline were within 12 months, the covered company would be required to submit the type of resolution plan based on its prior group status or its new group status (*e.g.,* if a triennial full filer became a triennial reduced filer, it could submit either the full or targeted resolution plan it would have submitted as a triennial full filer, or it could submit a reduced resolution plan as permitted by its status as a triennial reduced filer). If the deadline were 12 months or later, the covered company would be required to submit the type of resolution plan based on its new group status.
- If the resolution plan submission deadline for the new group were different than the prior group and:
  - The new deadline were at least 12 months in the future, the covered company would be required to submit a resolution plan of the type required by its new group status by the new deadline.
  - the new deadline were within 12 months, the covered company would not be required to submit a resolution plan on the new deadline. Instead, the

[37] *See https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20170324a21.pdf,* p. 4, *https://www.fdic.gov/resauthority/2018subguidance.pdf,* p. 4 and *https://www.federalreserve.gov/newsevents/pressreleases/bcreg20180129a.htm, https://www.fdic.gov/news/news/press/2018/pr18006.html.*

[38] 12 CFR 243.2(f)(1)(iii); 12 CFR 381.2(f)(1)(iii).

[39] 12 CFR 243.5(a); 12 CFR 381.5(a).

covered company would be required to submit a resolution plan of the type required by its new group status by the following submission deadline for the new group.

- A former triennial reduced filer that has become a triennial full filer would in all cases be required to submit a full resolution plan no later than its next deadline that occurs at least 12 months in the future. A triennial reduced filer would become a triennial full filer where its combined U.S. assets grow over $250 billion or it has $75 billion or more of one or more of the risk-based indicators (cross-jurisdictional activity, nonbank assets, weighted short-term wholesale funding, or off-balance-sheet exposure) within its U.S. operations. Because these events would represent significant changes to the firm's U.S. operations, submission of a full resolution plan would be useful to allow the agencies to evaluate whether there could be any related challenges to the firm's resolvability. After the covered company submits a full resolution plan, it would submit on future submission dates the same type of resolution plan as the other members of the new group.

The proposal retains the agencies' authority to require a covered company to submit a resolution plan earlier than the deadline for the new group's submission, so long as the agencies notify the covered company of the revised submission deadline at least 180 days in advance.

The proposal would also permit the agencies to require a full resolution plan to be submitted within such time period as specified by the agencies.[40] In this instance, a firm may be required to submit a resolution plan at a different time or of a different plan type relative to its filing group. For example, a triennial reduced filer may become a triennial full filer due to a merger or acquisition of assets, but may not be required to submit a full resolution plan for a number of years due to the timing of the transaction. If the new, larger covered company has assets or operations that are of particular importance to U.S. financial stability, the agencies may jointly require it to submit a full resolution plan earlier than the rest of its new filing group.

The notice of material events requirement has been revised and clarified to reflect the creation of a material changes definition. The agencies determined that the material changes definition was too broad to merit a notice requirement and instead propose the concept of extraordinary events that would require a notice. An extraordinary event is a material merger, acquisition of assets or other similar transaction, or a fundamental change to a covered company's resolution strategy (such as a change from single point of entry to multiple point of entry).

Question 21: The agencies invite comment on whether the listed events that are proposed to constitute extraordinary events are appropriate, or if there are additional events should be identified.

6. Clarification of the Mapping Expectations for Foreign Banking Organizations

The proposal would amend the language governing the expectations regarding the mapping of intragroup interconnections and interdependencies by foreign banking organizations.[41] The proposal would clarify that foreign banking organizations would be expected to map (a) the interconnections and interdependencies among their U.S. subsidiaries, branches, and agencies, (b) the interconnections and interdependencies between these U.S. entities and any critical operations and core business lines, and (c) the interconnections and interdependencies between these U.S. entities and any foreign-based affiliates.

7. Standard of Review

In reviewing resolution plans, the agencies have identified ''deficiencies'' and ''shortcomings'' in plans and have issued letters to covered companies describing the rationale for the findings and suggesting potential alternatives for how the identified deficiencies and shortcomings could be addressed. While the agencies have defined these terms in a public statement, they are not defined in the Rule.[42] To provide an opportunity for public comment on these terms and a clearer articulation of the standards the agencies apply in identifying deficiencies and shortcomings, the proposal would define a deficiency and a shortcoming.

The proposed definition of deficiency is as follows: An aspect of a firm's resolution plan that the agencies jointly determine presents a weakness that individually or in conjunction with other aspects could undermine the feasibility of the firm's plan. Where a deficiency has been identified, the covered company must correct the identified weakness and resubmit a revised resolution plan to avoid being subject to more stringent regulatory requirements or restrictions, as described in section 165(d)(5) of the Dodd-Frank Act and §§ ____.5 and ____.6 of the Rule.

The proposal also includes a definition of a shortcoming. A shortcoming would be defined as a weakness or gap that raises questions about the feasibility of a firm's plan, but does not rise to the level of a deficiency for both agencies. In some instances, a weakness that only one agency considers a deficiency may constitute a shortcoming for purposes of resolution plan feedback or guidance. A shortcoming may require additional analysis from the covered company or additional work by the covered company, or both. Although a shortcoming would not require a firm to resubmit a revised resolution plan prior to its next plan submission date, the agencies may require a firm to provide an interim update regarding progress made to address the shortcoming prior to the firm's next resolution plan submission date pursuant to § ____.4(d)(3) of the proposal. If the issue is not satisfactorily explained or addressed in the covered company's next resolution plan, it may be found to be a deficiency in the covered company's next resolution plan. It is not necessary for the agencies to identify an issue as a shortcoming before identifying it as a deficiency.[43] In addition, the agencies may identify issues and weaknesses in a covered company's resolution plan in feedback provided to the firm without jointly classifying them as deficiencies or shortcomings.

Both deficiencies and shortcomings reflect weaknesses that the agencies consider important and should be addressed in the firm's next resolution plan submission. The agencies' correspondence to a firm identifying one or more deficiencies or shortcomings will normally suggest a manner in which the covered company may address the deficiencies or shortcomings. These suggestions do not preclude the covered company from pursuing a different means of addressing the deficiency or shortcoming.

Question 22: The agencies invite comment on all aspects of the proposed

[40] When requiring a covered company to file a full resolution plan within a time period different from that of other covered companies in the same filing group, the agencies believe that 12 months is presumptively a reasonable period of time. However, a shorter time period may be reasonable in light of the relevant facts and circumstances.

[41] 12 CFR 243.4(a)(2)(i); 12 CFR 381.4(a)(2)(i); § ____.5(a)(2)(i) of the proposal.

[42] *Resolution Plan Assessment Framework and Firm Determinations (2016),* April 13, 2016, *https://www.fdic.gov/news/news/press/2016/pr16031a.pdf.*

[43] As noted above, as part of codifying definitions for the terms ''deficiency'' and ''shortcoming,'' the proposal would clarify that the agencies may jointly identify an issue as a deficiency without first identifying it as a shortcoming.

definitions of ''*deficiency*'' *and* ''*shortcoming.*''

8. Deletion of ''deficiencies'' Relating to Management Information Systems

The Rule requires a resolution plan to include information about a covered company's management information systems, including a description and analysis of the system's ''deficiencies, gaps or weaknesses'' in the system's capabilities. The proposal deletes the term ''deficiencies'' from this informational content requirement solely to avoid confusion with the proposal's new definition of ''deficiencies'' in § ____.8(b) of the proposal, and not to change the informational requirement relating to a covered company's management information systems.

9. Incorporation by Reference

Similar to the current Rule, the proposal would continue to allow a covered company to incorporate by reference information from its previously submitted resolution plans, subject to restrictions that the covered company clearly identifies the information it is incorporating and the specific location of the information in the previously submitted plan by, for example, indicating the relevant page range or subsection of the resolution plan. The proposal would require the referenced information to remain accurate in all respects that are material to the covered company's resolution plan. The agencies intend that this clarification regarding the material accuracy of referenced information provide covered companies greater flexibility in their ability to incorporate by reference information, thereby reducing duplication and further streamlining the resolution planning process. The proposal's incorporation of the waiver concept should not be interpreted to conflict with the ability to incorporate items by reference. In particular, if the agencies were to deny a waiver request, the covered company would not be precluded from incorporating by reference elements that it sought to have waived, so long as the information remains accurate in all respects that are material to the covered company's resolution plan. The agencies note that any information incorporated by reference would remain subject to the contemporaneous certification requirement specified in the Rule.

E. Alternative Scoping and Tailoring Criteria

In its tailoring proposals, the Board presented an alternative approach for assessing the risk profile and systemic footprint of a U.S. banking organization and of a foreign banking organization's combined U.S. operations or U.S. intermediate holding company using a single, comprehensive score. The Board uses an identification methodology (scoring methodology) to identify a U.S. bank holding company as a U.S. GSIB and apply risk-based capital surcharges to these firms. The Board could use this same scoring methodology to determine whether to apply the resolution planning requirements to firms with $100 billion or more but less than $250 billion in total consolidated assets. The agencies could likewise use this same scoring methodology to divide U.S. and foreign firms into groups for the purposes of determining the frequency and informational content of resolution plan filings.

1. Alternative Scoping Criteria for U.S. Firms

The scoring methodology in the Board's regulations is used to calculate a U.S. GSIB's capital surcharge under two methods.[44] The first method is based on the sum of a firm's systemic indicator scores reflecting its size, interconnectedness, cross-jurisdictional activity, substitutability, and complexity (method 1). The second method is based on the sum of these same measures of risk, except that the substitutability measures are replaced with a measure of the firm's reliance on short-term wholesale funding (method 2).

The Board designed the scoring methodology to provide a single, comprehensive, integrated assessment of a large bank holding company's systemic footprint. Accordingly, the indicators in the scoring methodology measure the extent to which the failure or distress of a bank holding company could pose a threat to U.S. financial stability or inflict material damage on the broader economy. The Board could also use the indicators in the scoring methodology to help identify banking organizations that have heightened risk profiles and would closely align with the risk-based factors specified in section 165 of the Dodd-Frank Act for applying enhanced prudential standards, including the resolution planning requirement. Importantly, large bank holding companies already submit to the Board periodic public reports on their indicator scores in the scoring methodology. Accordingly, use of the scoring methodology more broadly for tailoring of resolution planning requirements may promote transparency and could economize on compliance costs for large bank holding companies.

Under the alternative scoring methodology, a banking organization's size and either its method 1 or method 2 score from the scoring methodology would be used to determine which category of standards would apply to the firm. In light of the changes made by EGRRCPA, the Board in its domestic tailoring proposal conducted an analysis of the distribution of method 1 and method 2 scores of bank holding companies and covered savings and loan holding companies with at least $100 billion in total consolidated assets.

Category I. As under the domestic tailoring proposal and under the Board's existing enhanced prudential standards framework, Category I standards would continue to apply to U.S. GSIBs, which would continue to be defined as U.S. banking organizations with a method 1 score of 130 or more.

Category II. Category II banking organizations were defined in the domestic tailoring proposal as those whose failure or distress could impose costs on the U.S. financial system and economy that are higher than the costs imposed by the failure or distress of an average banking organization with total consolidated assets of $250 billion or more.

In selecting the ranges of method 1 or method 2 scores that could define the application of Category II standards in the domestic tailoring proposal, the Board considered the potential of a firm's material distress or failure to disrupt the U.S. financial system or economy. As noted in section III.A and III.C of the domestic tailoring proposal, during the 2008 financial crisis, significant losses at Wachovia Corporation, which had $780 billion in total consolidated assets at the time of being acquired in distress, had a destabilizing effect on the financial system. In the domestic tailoring proposal, the Board estimated method 1 and method 2 scores for Wachovia Corporation, based on available data, and also calculated the scores of banking organizations with more than $250 billion in total consolidated assets that are not U.S. GSIBs assuming that each had $700 billion in total consolidated assets (the asset size threshold used to define Category II in the Board's domestic tailoring proposal). In the domestic tailoring proposal, the Board also considered the outlier method 1 and method 2 scores for banking organizations with more than $250 billion in total consolidated assets that are not U.S. GSIBs.

Based on this analysis, under the alternative methodology, the Board

[44] 12 CFR part 217, subpart H.

would apply Category II standards to any non-U.S. GSIB banking organization with $100 billion or more in total consolidated assets and with a method 1 score between 60 and 80 or a method 2 score between 100 and 150. If the Board were to establish a scoring methodology for these purposes in the final rule, the Board would set a single score within the listed ranges for application of Category II standards. The Board invites comment on what score within these ranges would be appropriate.

Category III. As noted, section 165 of the Dodd-Frank Act, as amended by EGRRCPA, requires the Board to apply enhanced prudential standards (including the resolution planning requirement) to any bank holding company with total consolidated assets of $250 billion or more and authorizes the Board to apply these standards to bank holding companies with $100 billion or more and less than $250 billion in total consolidated assets. In order to determine a scoring methodology threshold for application of Category III standards to banking organizations with $100 billion or more and less than $250 billion in total consolidated assets, the Board in the domestic tailoring proposal considered the scores of these banking organizations as compared to the scores of banking organizations with $250 billion or more in total consolidated assets that are not U.S. GSIBs. Based on the analysis in the domestic tailoring proposal, the Board, under a scoring methodology approach, would apply Category III standards to banking organizations with total consolidated assets of $100 billion or more and less than $250 billion that have a method 1 score between 25 and 45. Banking organizations with a score in this range would have a score similar to that of the average firm with $250 billion or more in total consolidated assets. Using method 2 scores, the Board would apply Category III standards to any banking organization with total consolidated assets $100 billion or more and less than $250 billion that have a method 2 score between 50 and 85. Again, if the Board were to establish a scoring methodology for these purposes in the final rule, the Board would pick a single score within the listed ranges. The Board invites comment on what score within these ranges would be appropriate.

Category IV. Under a score-based approach and similar to the domestic tailoring proposal, the Board would apply Category IV standards to banking organizations with $100 billion or more in total consolidated assets that do not meet any of the thresholds specified for Categories I through III (that is, a method 1 score of less than 25 to 45 or a method 2 score of less than 50 to 85). If the score-based approach is adopted, the Board may or may not exercise its discretion to apply resolution planning requirements to these firms.

Question 23: What are the advantages and disadvantages to using the alternative scoring methodology and category thresholds described above relative to the proposed thresholds for U.S. firms?

Question 24: If the Board were to use the alternative scoring methodology for purposes of determining whether to apply the resolution planning requirements to U.S. firms with $100 billion or more and less than $250 billion in total consolidated assets, should the Board use method 1 scores, method 2 scores, or both?

Question 25: If the Board adopts the alternative scoring methodology, what would be the advantages or disadvantages of the Board requiring banking organizations to calculate their scores at a frequency greater than annually, including, for example, requiring a banking organization to calculate its score on a quarterly basis?

Question 26: With respect to each category of standards described above, at what level should the method 1 or method 2 score thresholds be set for U.S. firms and why, and discuss how those levels could be impacted by considering additional data, or by considering possible changes in the banking system. Commenters are encouraged to provide data supporting their recommendations.

Question 27: What other approaches should the Board consider in setting thresholds for determining whether to apply the resolution planning requirements to U.S. firms with $100 billion or more and less than $250 billion in total consolidated assets?

2. Alternative Scoping Criteria for Foreign Banking Organizations

Similar to the alternative approach for U.S. firms outlined above, an alternative approach for tailoring the application of resolution planning requirements to a foreign banking organization would be to use a single, comprehensive score to assess the risk profile and systemic footprint of a foreign banking organization's combined U.S. operations. As mentioned above, the Board uses a scoring methodology to identify U.S. GSIBs and apply risk-based capital surcharges to these firms. As an alternative in both tailoring proposals, the Board proposed a scoring methodology that also could be used to tailor resolution planning requirements for foreign banking organizations.

As mentioned above, the scoring methodology in the Board's regulations is used to calculate a U.S. GSIB's capital surcharge under two methods.[45] Consistent with the tailoring proposals and as an alternative to the threshold approach under this proposal, the Board is seeking comment on use of the scoring methodology to apply the resolution planning requirement to foreign banking organizations with $100 billion or more and less than $250 billion in total consolidated assets.

As discussed in further detail in the tailoring proposals, the scoring methodology was designed to identify and assess the systemic risk of a large banking organization, and can be similarly used to measure the risks posed by the U.S. operations of foreign banking organizations. Like the thresholds-based approach in this proposal and the tailoring proposals, the indicators used in the scoring methodology closely align with the risk-based factors specified in section 165 of the Dodd-Frank Act. Because this information would be reported publicly, use of the scoring methodology may promote transparency in the application of such standards to foreign banking organizations.

Under the alternative scoring methodology, the size of a foreign banking organization's combined U.S. assets, together with the method 1 or method 2 score of its U.S. operations under the scoring methodology, would be used to determine which category of standards would apply. Consistent with the FBO tailoring proposal, tailoring of the resolution planning requirement would be based on the method 1 or method 2 score applicable to a foreign banking organization's combined U.S. operations. U.S. intermediate holding companies already report information required to calculate method 1 and method 2 scores, and in connection with the FBO tailoring proposal, the reporting requirements would be extended to include a foreign banking organization's combined U.S. operations.[46]

To determine which category of standards would apply under the alternative scoring methodology, the Board in its FBO tailoring proposal considered the distribution of method 1 and method 2 scores of the U.S. operations of foreign banking

[45] *See* 12 CFR part 217, subpart H.

[46] As discussed in detail in the FBO tailoring proposal, the FR Y–15 would be amended to collect risk-indicator data for the combined U.S. operations of foreign banking organizations.

organizations, U.S. intermediate holding companies, U.S. bank holding companies, and certain savings and loan holding companies with $100 billion or more in total consolidated assets.[47]

Category II. In the FBO tailoring proposal, the Board considered the potential of a firm's material distress or failure to disrupt the U.S. financial system or economy in selecting the ranges of method 1 or method 2 scores that could define the application of Category II standards.

Based on the Board's analysis in the FBO tailoring proposal and to maintain comparability to the domestic tailoring proposal, under the alternative scoring methodology the Board would apply Category II standards to any foreign banking organization with at least $100 billion in combined U.S. assets whose combined U.S. operations have (a) a method 1 score that meets or exceeds a minimum score between 60 and 80 or (b) a method 2 score that meets or exceeds a minimum score between 100 to 150.

If the Board were to establish a scoring methodology for these purposes in the final rule, the Board would set a single score within the listed ranges for the application of Category II standards. The Board invites comment on what score within these ranges would be appropriate.

Category III. Under the FBO tailoring proposal, the Board would apply category III standards to a foreign banking organization with combined U.S. assets of $250 billion or more, reflecting, among other things, the crisis experience of U.S. banking organizations with total consolidated assets of $250 billion or more, which presented materially different risks to U.S. financial stability relative to firms with less than $250 billion in assets. Similarly, under the domestic tailoring proposal, the Board would at a minimum apply Category III standards to a firm with assets of $250 billion or more, reflecting the threshold above which the Board must apply enhanced prudential standards under section 165 of the Dodd-Frank Act.

In the domestic tailoring proposal, the Board sought comment on an alternative scoring methodology under which a firm with total consolidated assets of $100 billion or more and less than $250 billion that had a method 1 or method 2 score within a specified range would be subject to Category III standards. Specifically, the Board proposed selecting a minimum score for application of Category III standards between 25 and 45 under method 1, or between 50 and 85 under method 2. The maximum score for application of the Category III standards would be one point lower than the minimum score selected for application of Category II standards. In selecting these ranges, the Board compared the scores of U.S. firms with total consolidated assets of $100 billion or more and less than $250 billion with those of firms with total consolidated assets of $250 billion or more. In the FBO tailoring proposal, the Board is proposing the same thresholds for application of Category III standards to foreign banking organizations under the alternative scoring methodology.

In this proposal, the Board proposes to use the same range for foreign banking organizations, such that Category III standards would apply to a foreign banking organization with combined U.S. assets of $100 billion or more and less than $250 billion with a method 1 score that meets or exceeds a minimum score between 25 and 45 or a method 2 score that meets or exceeds a minimum score between 50 and 85, and in either case is below the score threshold for Category II standards. The Board invites comment on what score within these ranges would be appropriate.

Category IV. The Board proposes that under the alternative scoring methodology, Category IV standards would apply to a foreign banking organization with $100 billion or more in combined U.S. assets whose method 1 or method 2 score for its combined U.S. operations is below the minimum score threshold for Category III. If the score-based approach is adopted, the Board may or may not exercise its discretion to apply resolution planning requirements to these firms.

Question 28: What are the advantages and disadvantages to the use of the alternative scoring methodology and category thresholds described above instead of the proposed thresholds for foreign banking organizations?

Question 29: If the Board were to use the alternative scoring methodology for purposes of determining whether to apply the resolution planning requirements to foreign banking organizations with $100 billion or more and less than $250 billion in total consolidated assets, should the Board use method 1 scores, method 2 scores, or both? What are the challenges of applying the scoring methodologies to the combined U.S. operations of a foreign banking organization? What modifications to the scoring methodology, if any, should the Board consider (e.g., should intercompany transactions be reflected in the calculation of indicators)?

Question 30: If the Board adopts the alternative scoring methodology, what would be the advantages or disadvantages of the Board requiring scores to be calculated for the U.S. operations of a foreign banking organization at a frequency greater than annually, including, for example, requiring scores to be calculated on a quarterly basis?

Question 31: With respect to each category of standards described above, at what level should the method 1 or method 2 score thresholds be set and why? Commenters are encouraged to provide data supporting their recommendations.

Question 32: What other approaches should the Board consider in setting thresholds for determining whether to apply the resolution planning requirements to foreign banking organizations with $100 billion or more and less than $250 billion in total consolidated assets and why? How would any such approach affect the comparability of requirements across U.S. banking organizations and foreign banking organizations?

3. Alternative Tailoring Criteria

If the Board were to use the alternative scoring methodology for purposes of determining whether to apply the resolution planning requirements to firms with $100 billion or more and less than $250 billion in total consolidated assets, the agencies may also use the scoring methodology to differentiate among U.S. and foreign firms to which the resolution planning requirements would apply. For example, the agencies could divide covered companies required to file resolution plans into the three groups of filers as follows:

- The biennial filers group could comprise firms subject to Category I standards under the alternative scoring methodology, which would continue to be U.S. GSIBs, as well as any nonbank financial company supervised by the Board that has not been jointly designated as a triennial full filer by the agencies.
- The triennial full filers group could comprise firms subject to Category II and III standards under the alternative scoring methodology, as well as any nonbank financial company supervised by the Board that has been designated as a triennial full filer by the agencies.
- The triennial reduced filers group could comprise covered companies that are neither subject to Category I, II, or III standards under the alternative scoring methodology, nor nonbank

[47] In conducting its analysis, the Board considered method 1 and method 2 scores as of September 30, 2018.

financial companies supervised by the Board. This would include foreign banking organizations with $250 billion or more in total global assets that are not subject to Category II or Category III standards under the alternative scoring methodology.

The agencies are seeking comment on use of the alternative scoring methodology to tailor the application of the resolution planning requirement to covered companies.

Question 33: If the Board were to use the alternative scoring methodology for purposes of determining whether to apply the resolution planning requirements to firms with $100 billion or more and less than $250 billion in total consolidated assets, should the agencies use the same scoring methodology for purposes of tailoring resolution planning requirements? What are the advantages and disadvantages in using the alternative scoring methodology to categorize U.S. firms with systemic footprints smaller than the U.S. GSIBs for purposes of tailoring the resolution planning requirements?

Question 34: What other approaches should the agencies consider in setting thresholds for tailoring resolution planning requirements?

IV. Transition Period

Under the proposal, the rule would take effect no earlier than (a) the first day of the first calendar quarter after the issuance of the final rule and (b) November 24, 2019. Financial institutions that are covered companies when the final rule is issued would be required to comply with the proposed requirements beginning on the effective date.

The following summary describes the proposed submission dates for each new group of filers in the coming years. There currently are no nonbank financial companies designated for Board supervision by the Council so the summary does not address this type of firm.

Biennial filers (all firms subject to Category I standards): All U.S. firms identified as U.S. GSIBs and subject to Category I standards would be biennial filers. Firms in this group of filers would submit resolution plans on a biennial basis. The biennial filers are currently required to submit resolution plans under the Rule by July 1, 2019. If the proposal is adopted, their subsequent submission would be due by July 1, 2021. This submission would be a targeted resolution plan. Thereafter, the biennial filers would alternate between filing full and targeted resolution plans on a biennial basis going forward.

Triennial full filers (all firms subject to Category II or Category III standards): Firms in this filing group would submit resolution plans on a triennial basis and alternate between filing full resolution plans and targeted resolution plans. If the proposal is adopted, each triennial full filer would submit its first full resolution plan by July 1, 2021 and alternate between filing full and targeted resolution plans on a triennial basis going forward. For firms in this filing group with outstanding shortcomings or deficiencies, it is expected that remediation and related timelines established by the agencies would continue to apply. For example, the four foreign banking organizations that received feedback letters on December 20, 2018 (Barclays plc, Credit Suisse Group AG, Deutsche Bank AG, and UBS Group AG) would be expected to address their shortcomings and complete their respective project plans by July 1, 2020, as provided in the feedback letters. Consistent with previous communications to the firm, Northern Trust Corporation would be expected to provide an update in response to the agencies' joint feedback letter regarding its December 2017 resolution plan.

Triennial reduced filers (all other filers): Firms in this filing group would submit reduced resolution plans on a triennial basis. If the proposal is adopted, each triennial reduced filer would be required to submit its first reduced resolution plan by July 1, 2022, and then every three years going forward.

Question 35: The agencies invite comment on the proposed transition period. Are there other alternatives to consider as the agencies finalize the rule?

V. Impact Analysis

The proposal would modify the expected costs imposed by the Rule while seeking to preserve the benefits to U.S. financial stability provided by the Rule.

Consistent with EGRRCPA, the proposal would change the asset thresholds at which all firms are required to file resolution plans from $50 billion to $250 billion in total consolidated assets. The proposal also would require the submission of resolution plans by certain firms with $100 billion or more and less than $250 billion in total consolidated assets, including those that have certain risk-based indicators. As of June 30, 2018, firms with total consolidated assets between $50 and $100 billion accounted for less than 2.5 percent of total U.S. industry assets, and firms with $100 billion or more and less than $250 billion in total consolidated assets accounted for 17 percent of total U.S. industry assets.[48] The net impact of these threshold changes would reduce the number of U.S. filers from 27 to 12 and the number of foreign banking organization filers from 108 to 62. This reduction in resolution plan filers would decrease costs as fewer firms would be required to prepare plans.

The proposal would also seek to minimize the impact of this change on benefits to U.S. financial stability provided from resolution plan filings by maintaining filing requirements for certain firms with $100 billion or more and less than $250 billion in total consolidated assets, including those that have certain risk-based indictors.

The proposal would also reduce the frequency of required resolution plan submissions for the remaining resolution plan filers, including the largest and most complex resolution plan filers, by extending the default filing cycle between resolution plan submissions. The proposal would modify the filing cycle in the Rule to every two years for U.S. GSIBs and certain systemically important nonbank financial companies and to every three years for all other resolution plan filers. This change formalizes a practice that has developed over time to extend firms' resolution plan submission dates to allow at least two years between plan submissions and should reduce costs.

In the August 2018 proposal to extend mandatory Reporting Requirements Associated with Regulation QQ, the estimate of total annual burden for resolution plan filings was estimated to be 1,137,797 hours.[49] The revised annual burden, incorporating proposed modifications to the resolution plan rule is 425,523 hours. At an estimated mean wage of $56.05 per hour,[50] this reduction in the number of resolution plan filers has an estimated wage savings of approximately $39,922,958 per year. Impacts on resolution preparedness that could arise from the reduced frequency of filing would be mitigated by the proposal authorizing the agencies to require a firm to file a resolution plan with appropriate notice. This authority would address circumstances where the agencies

[48] Assets as reported on form FR Y–9C for the quarter ending June 30, 2018.

[49] Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB, 83 FR 42296 (August 21, 2018).

[50] Mean hourly wages retrieved from the Bureau of Labor and Statistics (BLS), Occupational Employment and Wages May 2017, published March 30, 2018, *www.bls.gov/news.release/ocwage.t01.htm*.

determine that waiting for a firm to submit on its regular submission cycle could present excess risk.

Finally, the proposal is also expected to improve efficiency by streamlining the information requirements for the resolution plan submissions: The proposal includes a mechanism for firms to request a waiver from certain informational requirements in full resolution plan submissions; a new, more focused plan submission (*i.e.,* targeted resolution plan); and formalizes the conditions and content for reduced resolution plans. These resolution plan modifications are appropriate because the firms' resolution plans have matured and become more stable through multiple submissions. Further, the resolution plan modifications should reduce the costs of preparing and reviewing the plans without having a material impact on the benefits provided by the plans.

In short, as detailed in this section, the proposal would provide estimated wage savings, to the institutions affected by it, totaling $39,922,958 due to the reduction of 712,274 burden hours needed to comply with the Rule. Moreover, firms could reallocate the 712,274 hours used to comply with the Rule to other activities considered to be more beneficial. Thus, the total economic benefits of the proposal could be greater than the dollar amount estimated.

Question 36: The agencies invite comment on all aspects of this evaluation of costs and benefits.

VI. Regulatory Analysis

A. Paperwork Reduction Act

Certain provisions of the proposal contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA). In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The agencies reviewed the proposal and determined that the proposal would revise the reporting requirements that have been previously cleared by the OMB under the Board's control number (7100–0346). When the Rule was adopted in 2011, the Board took the entire burden associated with the Rule even though the Board and the Corporation are both legally authorized to receive and review resolution plans. The agencies have decided to now share equally in the burden associated with the proposal. As a result, the Corporation will request approval from the OMB for one half of the Board's PRA burden, as revised by the proposal, and the OMB will assign an OMB control number. The Board has reviewed the proposal under the authority delegated to the Board by the OMB and at the final rule stage, will revise and extend its information collection for three years.

Comments are invited on:

- Whether the collections of information are necessary for the proper performance of the Board's functions, including whether the information has practical utility;
- The accuracy of the estimate of the burden of the information collections, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, utility, and clarity of the information to be collected;
- Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology;
- Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information; and
- Burden estimates for preparation of waiver requests and the calculation of any associated reduction in burden.

All comments will become a matter of public record. Comments on the collection of information should be sent to the addresses listed in the **ADDRESSES** section of this document. A copy of the comments may also be submitted to the OMB desk officer: By mail to U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503, or by facsimile to 202–395–6974; or email to *oira_submission@omb.eop.gov,* Attention, Federal Banking Agency Desk Officer.

Proposed Information Collection

Title of Information Collection: Reporting Requirements Associated with Resolution Planning.

Agency Form Number: FR QQ.

OMB Control Number: 7100–0346.

Frequency of Response: Biennially, Triennially.

Respondents: Bank holding companies [51] with total consolidated assets of $250 billion or more, bank holding companies with $100 billion or more in total consolidated assets with certain characteristics specified in the proposal, and nonbank financial firms designated by the Council for supervision by the Board.

FR QQ	Number of respondents [52]	Annual frequency	Estimated average hours per response	Estimated annual burden hours
Current				
Reduced Reporters	72	1	60	4,320
December Filers:				
Tailored Reporters:				
Domestic	11	1	9,000	99,000
Foreign	6	1	1,130	6,780
Full Reporters:				
Domestic	3	1	26,000	78,000
Foreign	6	1	2,000	12,000
Complex Filers:				
Domestic	9	1	[53] 79,522	715,697
Foreign	4	1	55,500	222,000
Current Total	.....	.....	.....	1,137,797

[51] This includes any foreign bank or company that is, or is treated as, a bank holding company under section 8(a) of the International Banking Act of 1978, and meets the relevant total consolidated assets threshold.

FR QQ	Number of respondents [52]	Annual frequency	Estimated average hours per response	Estimated annual burden hours
Proposed				
Triennial Reduced	53	1	20	1,060
Triennial Full:				
Complex Foreign	4	1	13,135	52,540
Foreign and Domestic	9	1	5,667	51,003
Biennial Filers:				
Domestic	8	1	40,115	320,920
Waivers [54]	1	1	1	1
Current Total	.....	.....	.....	425,523
Change	.....	.....	.....	712,274

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* generally requiresan agency, in connection with a proposed rule, to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of a proposed rule on small entities.[55] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $550 million.[56]

The agencies have considered the potential impact of the proposal on small entities in accordance with the RFA. As discussed below, the Board believes and the Corporation certifies that the proposal is not expected to have a significant impact on a substantial number of small entities, including small banking organizations.

As discussed in detail above, section 165(d) of the Dodd-Frank Act requires certain financial companies to report periodically to the agencies their plans for rapid and orderly resolution under the U.S. Bankruptcy Code in the event of material financial distress or failure. This provision of the Dodd-Frank Act has recently been amended by EGRRCPA.

In accordance with section 165(d) of the Dodd-Frank Act as amended by EGRRCPA, the Board is proposing to amend Regulation QQ (12 CFR part 243) and the Corporation is proposing to amend part 381 (12 CFR part 381) to amend the requirements that a covered company periodically submit a resolution plan to the agencies.[57] The proposal would also modify the procedures for joint review of a resolution plan by the agencies. The reasons and justification for the proposal are described in the Supplementary Information.

Under regulations issued by the SBA, a ''small entity'' includes those firms within the ''Finance and Insurance'' sector with total consolidated assets totaling less than $550 million.[58] The agencies believe that the Finance and Insurance sector constitutes a reasonable universe of firms for these purposes because such firms generally engage in activities that are financial in nature. Consequently, banks, bank holding companies or nonbank financial companies with total consolidated assets of $550 million or less are small entities for purposes of the RFA. As of June 30, 2018, there were 4,106 insured depository institutions and six bank holding companies considered ''small'' by the SBA under the RFA.[59]

As discussed in the **SUPPLEMENTARY INFORMATION**, the proposal would apply to covered companies, which includes only bank holding companies and foreign banks that are or are treated as a bank holding company (foreign banking organization) with at least $100 billion in total consolidated assets, and nonbank financial companies that the Council has determined under section 113 of the Dodd-Frank Act must be supervised by the Board and for which such determination is in effect. The assets of a covered company substantially exceed the $550 million asset threshold at which a banking organization is considered a ''small entity'' under SBA regulations.[60] The proposal would apply to a nonbank financial company designated by the Council under section 113 of the Dodd-Frank Act regardless of such a company's asset size. Although the asset size of nonbank financial companies may not be the determinative factor of whether such companies may pose systemic risks and would be designated by the Council for supervision by the Board, it is an important consideration.[61] It is therefore unlikely that a financial firm that is at or below the $550 million asset threshold would be designated by the Council under section 113 of the Dodd-Frank Act because material financial distress at such firms, or the nature, scope, size, scale, concentration, interconnectedness, or mix of it activities, are not likely to pose a threat to the financial stability of the United States.

[52] Of these respondents, none are small entities as defined by the Small Business Administration (*i.e.,* entities with less than $550 million in total assets) *https://www.sba.gov/document/support-table-size-standards.*

[53] This estimate captures the annual time that complex domestic filers will spend complying with this collection, given that eight of these filers will only submit two resolution plans over the three-year period covered by this document. The estimate therefore represents two-thirds of the time these firms are estimated to spend on each resolution plan submission.

[54] The agencies cannot reasonably estimate how many of the 21 firms expected to file full resolution plans may submit waiver requests, nor how long it would take to prepare a waiver request. Accordingly, the agencies are including this line as a placeholder.

[55] 5 U.S.C. 601 *et seq.*

[56] The SBA defines a small banking organization as having $550 million or less in assets, where ''a financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* 13 CFR 121.201 (as amended, effective December 2, 2014). ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' *See* 13 CFR 121.103. Following these regulations, the agencies use a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is ''small'' for the purposes of RFA.

[57] *See* 12 U.S.C. 5365(d).

[58] 13 CFR 121.201.

[59] FFIEC Call reports, June 30, 2018.

[60] The Dodd-Frank Act provides that the Board may, on the recommendation of the Council, increase the asset threshold for the application of the resolution planning requirements. *See* 12 U.S.C. 5365(a)(2)(B). However, neither the Board nor the Council has the authority to lower such threshold.

[61] *See* 12 CFR 1310.11.

Because the proposal is not likely to apply to any company with assets of $550 million or less, if adopted in final form, it is not expected to apply to any small entity for purposes of the RFA. Moreover, as discussed in the Supplementary Information, the Dodd-Frank Act requires the agencies jointly to adopt rules implementing the provisions of section 165(d) of the Dodd-Frank Act. The agencies do not believe that the proposal duplicates, overlaps, or conflicts with any other Federal rules.

In light of the foregoing, the Board believes and the Corporation certifies that the proposal, if adopted in final form, will not have a significant economic impact on a substantial number of small entities supervised. Nonetheless, the agencies invite comment on whether the proposal would have significant effects on small organizations, and whether the potential burdens or consequences of such effects could be minimized in a manner consistent with section 165(d) of the Dodd-Frank Act.

Question 37: The agencies invite written comments regarding this analysis, and request that commenters describe the nature of any impact on small entities and provide empirical data to illustrate and support the extent of the impact. A final regulatory flexibility analysis will be conducted after consideration of comment received during the public comment period.

C. Riegle Community Development and Regulatory Improvement Act of 1994

The Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) requires that each Federal banking agency, in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, new regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions generally must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.

Because the proposal would not impose additional reporting, disclosure, or other requirements on insured depository institutions, section 302 of the RCDRIA therefore does not apply. Nevertheless, the requirements of RCDRIA will be considered as part of the overall rulemaking process. In addition, the agencies invite any other comments that further will inform the agencies' consideration of RCDRIA.

Question 38: The agencies invites comment on this section, including any additional comments that will inform the agencies' consideration of the requirements of RCDRIA.

D. Solicitation of Comments on the Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000.[62] The agencies have sought to present the proposal in a simple and straightforward manner, and invite comment on the use of plain language. For example:

Question 39: Have the agencies organized the material to suit your needs? If not, how could they present the rule more clearly?

Question 40: Are the requirements of the proposal clearly stated? If not, how could they be stated more clearly?

Question 41: Does the proposal contain unclear technical language or jargon? If so, which language requires clarification?

Question 42: Would a different format (such as a different grouping and ordering of sections, a different use of section headings, or a different organization of paragraphs) make the regulation easier to understand? If so, what changes would make the proposal clearer?

Question 43: What else could the agencies do to make the proposal clearer and easier to understand?

Appendix A: Foreign Banking Organizations That Would Be Triennial Reduced Filers

Agricultural Bank of China
Australia and New Zealand Banking Group
Banco Bradesco
Banco De Sabadell
Banco Do Brasil
Banco Santander
Bank of China
Bank of Communications
Bank of Montreal
Bank of Nova Scotia
Bayerische Landesbank
BBVA Compass
BNP Paribas
BPCE Group
Caisse Federale de Credit Mutuel
Canadian Imperial Bank of Commerce
China Construction Bank Corporation
China Merchants Bank
CITIC Group Corporation
Commerzbank
Commonwealth Bank of Australia
Cooperative Rabobank
Credit Agricole Corporate and Investment Bank
DNB Bank
DZ Bank
Erste Group Bank AG
Hana Financial Group
Industrial and Commercial Bank of China
Industrial Bank of Korea
Intesa Sanpaolo
Itau Unibanco
KB Financial Group
KBC Bank
Landesbank Baden-Weurttemberg
Lloyds Banking Group
National Agricultural Cooperative Federation
National Australia Bank
Nordea Group
Norinchukin Bank
Oversea-Chinese Banking Corporation
Shinhan Bank
Skandinaviska Enskilda Banken
Societe Generale
Standard Chartered Bank
State Bank of India
Sumitomo Mitsui Financial Group
Sumitomo Mitsui Trust Holdings
Svenska Handelsbanken
Swedbank
UniCredit Bank
United Overseas Bank
Westpac Banking Corporation
Woori Bank

Text of the Common Rules

(All Agencies)

The text of the common rules appears below:

PART [ ]—RESOLUTION PLANS

Sec.
____.1 Authority and scope.
____.2 Definitions.
____.3 Critical operations.
____.4 Resolution plan required.
____.5 Informational content of a full resolution plan.
____.6 Informational content of a targeted resolution plan.
____.7 Informational content of a reduced resolution plan.
____.8 Review of resolution plans; resubmission of deficient resolution plans.
____.9 Failure to cure deficiencies on resubmission of a resolution plan.
____.10 Consultation.
____.11 No limiting effect or private right of action; confidentiality of resolution plans.
____.12 Enforcement.

[62] 12 U.S.C. 4809(a).

§ ____.1 Authority and scope.

(a) *Authority.* This part is issued pursuant to section 165(d)(8) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, 124 Stat. 1376, 1426–1427), as amended by the Economic Growth, Regulatory Relief, and Consumer Protection Act (Pub. L. 115–174, 132 Stat. 1296) (the *Dodd-Frank Act*), 12 U.S.C. 5365(d)(8), which requires the Board of Governors of the Federal Reserve System (Board) and the Federal Deposit Insurance Corporation (Corporation) to jointly issue rules implementing the provisions of section 165(d) of the Dodd-Frank Act.

(b) *Scope.* This part applies to each covered company and establishes rules and requirements regarding the submission and content of a resolution plan, as well as procedures for review by the Board and Corporation of a resolution plan.

§ ____.2 Definitions.

For purposes of this part:

Bankruptcy Code means Title 11 of the United States Code.

Biennial filer is defined in § ____.4(a)(1).

Category II banking organization means a covered company that is a category II banking organization pursuant to § 252.5 of this title.

Category III banking organization means a covered company that is a category III banking organization pursuant to § 252.5 of this title.

Company means a corporation, partnership, limited liability company, depository institution, business trust, special purpose entity, association, or similar organization, but does not include any organization, the majority of the voting securities of which are owned by the United States.

Control. A company controls another company when the first company, directly or indirectly, owns, or holds with power to vote, 25 percent or more of any class of the second company's outstanding voting securities.

Core business lines means those business lines of the covered company, including associated operations, services, functions and support, that, in the view of the covered company, upon failure would result in a material loss of revenue, profit, or franchise value.

Core elements mean the information required to be included in a full resolution plan pursuant to § ____.5(c), (d)(1)(i), (iii), and (iv), (e)(1)(ii), (e)(2), (3), and (5), (f)(1)(v), and (g) regarding capital, liquidity, and the covered company's plan for executing any recapitalization contemplated in its resolution plan, including updated quantitative financial information and analyses important to the execution of the covered company's resolution strategy.

Council means the Financial Stability Oversight Council established by section 111 of the Dodd-Frank Act (12 U.S.C. 5321).

Covered company—(1) *In general.* A covered company means:

(i) Any nonbank financial company supervised by the Board;

(ii) Any global systemically important BHC;

(iii) Any bank holding company, as that term is defined in section 2 of the Bank Holding Company Act, as amended (12 U.S.C. 1841), and part 225 of this title (the Board's Regulation Y), that has $250 billion or more in total consolidated assets, as determined based on the average of the company's four most recent Consolidated Financial Statements for Holding Companies as reported on the Federal Reserve's Form FR Y–9C; provided that in the case of a company whose total consolidated assets have increased as the result of a merger, acquisition, combination, or similar transaction, the Board and the Corporation may alternatively consider, in their discretion, to the extent and in the manner the Board and the Corporation jointly consider to be appropriate, one or more of the four most recent Consolidated Financial Statements for Holding Companies as reported on the Federal Reserve's Form FR Y–9C or Capital and Asset Reports for Foreign Banking Organizations as reported on the Federal Reserve's Form FR Y–7Q of the companies that were party to the merger, acquisition, combination or similar transaction;

(iv) Any foreign bank or company that is a bank holding company or is treated as a bank holding company under section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)), and that has $250 billion or more in total consolidated assets, as determined annually based on the foreign bank's or company's most recent annual or, as applicable, quarterly based on the average of the foreign bank's or company's four most recent quarterly Capital and Asset Reports for Foreign Banking Organizations as reported on the Federal Reserve's Form FR Y–7Q; provided that in the case of a company whose total consolidated assets have increased as the result of a merger, acquisition, combination, or similar transaction, the Board and the Corporation may alternatively consider, in their discretion, to the extent and in the manner the Board and the Corporation jointly consider to be appropriate, one or more of the four most recent Consolidated Financial Statements for Holding Companies as reported on the Federal Reserve's Form FR Y–9C or Capital and Asset Reports for Foreign Banking Organizations as reported on the Federal Reserve's Form FR Y–7Q of the companies that were party to the merger, acquisition, combination or similar transaction; and

(v) Any additional covered company as determined pursuant to § 243.13.

(2) *Cessation of covered company status for nonbank financial companies supervised by the Board and global systemically important BHCs.* Once a covered company meets the requirements described in paragraph (j)(1)(i) or (ii) of this section, the company shall remain a covered company until it no longer meets any of the requirements described in paragraph (j)(1) of this section.

(3) *Cessation of covered company status for other covered companies.* Once a company meets the requirements described in paragraph (j)(1)(iii) or (iv) of this section, the company shall remain a covered company until—

(i) In the case of a covered company described in paragraph (j)(1)(iii) of this section or a covered company described in paragraph (j)(1)(iv) of this section that files quarterly Capital and Asset Reports for Foreign Banking Organizations on the Federal Reserve's Form FR Y–7Q, the company has reported total consolidated assets that are below $250 billion for each of four consecutive quarters, as determined based on its average total consolidated assets as reported on its four most recent Consolidated Financial Statements for Holding Companies on the Federal Reserve's Form FR Y–9C or Capital and Asset Reports for Foreign Banking Organizations on the Federal Reserve's Form FR Y–7Q, as applicable; or

(ii) In the case of a covered company described in paragraph (j)(1)(iv) of this section that does not file quarterly Capital and Asset Reports for Foreign Banking Organizations on the Federal Reserve's Form FR Y–7Q, the company has reported total consolidated assets that are below $250 billion for each of two consecutive years, as determined based on its average total consolidated assets as reported on its two most recent annual Capital and Asset Reports for Foreign Banking Organizations on the Federal Reserve's Form FR Y–7Q, or such earlier time as jointly determined by the Board and the Corporation.

(4) *Multi-tiered holding company.* In a multi-tiered holding company structure, covered company means the top-tier of the multi-tiered holding company unless the Board and the Corporation

jointly identify a different holding company to satisfy the requirements that apply to the covered company. In making this determination, the Board and the Corporation shall consider:

(i) The ownership structure of the foreign banking organization, including whether the foreign banking organization is owned or controlled by a foreign government;

(ii) Whether the action would be consistent with the purposes of this part; and

(iii) Any other factors that the Board and the Corporation determine are relevant.

(5) *Asset threshold for bank holding companies and foreign banking organizations.* The Board may, pursuant to a recommendation of the Council, raise any asset threshold specified in paragraph (j)(1)(iii) or (iv) of this section.

(6) *Exclusion.* A bridge financial company chartered pursuant to 12 U.S.C. 5390(h) shall not be deemed to be a covered company hereunder.

Critical operations means those operations of the covered company, including associated services, functions and support, the failure or discontinuance of which would pose a threat to the financial stability of the United States.

Deficiency is defined in § ____.8(b).

Depository institution has the same meaning as in section 3(c)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(c)(1)) and includes a state-licensed uninsured branch, agency, or commercial lending subsidiary of a foreign bank.

Foreign banking organization means—

(1) A foreign bank, as defined in section 1(b)(7) of the International Banking Act of 1978 (12 U.S.C. 3101(7)), that:

(i) Operates a branch, agency, or commercial lending company subsidiary in the United States;

(ii) Controls a bank in the United States; or

(iii) Controls an Edge corporation acquired after March 5, 1987; and

(2) Any company of which the foreign bank is a subsidiary.

Foreign-based company means any covered company that is not incorporated or organized under the laws of the United States.

Full resolution plan means a full resolution plan described in § ____.5.

Functionally regulated subsidiary has the same meaning as in section 5(c)(5) of the Bank Holding Company Act, as amended (12 U.S.C. 1844(c)(5)).

Global systemically important BHC means a covered company that is a global systemically important BHC pursuant to § 252.5 of this title.

Identified critical operations means the critical operations of the covered company identified by the covered company or jointly identified by the Board and the Corporation under § ____.3(b)(2).

Material change means an event, occurrence, change in conditions or circumstances, or other change that results in, or could reasonably be foreseen to have, a material effect on:

(1) The resolvability of the covered company;

(2) The covered company's resolution strategy; or

(3) How the covered company's resolution strategy is implemented. Such changes include, but are not limited to:

(i) The identification of a new critical operation or core business line;

(ii) The identification of a new material entity or the de-identification of a material entity;

(iii) Significant increases or decreases in the business, operations, or funding or interconnections of a material entity; or

(iv) Changes in the primary regulatory authorities of a material entity or the covered company on a consolidated basis.

Material entity means a subsidiary or foreign office of the covered company that is significant to the activities of an identified critical operation or core business line, or is financially or operationally significant to the resolution of the covered company.

Material financial distress with regard to a covered company means that:

(1) The covered company has incurred, or is likely to incur, losses that will deplete all or substantially all of its capital, and there is no reasonable prospect for the company to avoid such depletion;

(2) The assets of the covered company are, or are likely to be, less than its obligations to creditors and others; or

(3) The covered company is, or is likely to be, unable to pay its obligations (other than those subject to a bona fide dispute) in the normal course of business.

Nonbank financial company supervised by the Board means a nonbank financial company or other company that the Council has determined under section 113 of the Dodd-Frank Act (12 U.S.C. 5323) shall be supervised by the Board and for which such determination is still in effect.

Rapid and orderly resolution means a reorganization or liquidation of the covered company (or, in the case of a covered company that is incorporated or organized in a jurisdiction other than the United States, the subsidiaries and operations of such foreign company that are domiciled in the United States) under the Bankruptcy Code that can be accomplished within a reasonable period of time and in a manner that substantially mitigates the risk that the failure of the covered company would have serious adverse effects on financial stability in the United States.

Reduced resolution plan means a reduced resolution plan described in § ____.7.

Shortcoming is defined in § ____.8(e).

Subsidiary means a company that is controlled by another company, and an indirect subsidiary is a company that is controlled by a subsidiary of a company.

Targeted resolution plan means a targeted resolution plan described in § ____.6.

Triennial full filer is defined in § ____.4(b)(1).

Triennial reduced filer is defined in § ____.4(c)(1).

United States means the United States and includes any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, and the Virgin Islands.

§ ____.3 Critical operations.

(a) *Identification of critical operations by covered companies*—(1) *Process and methodology required.* (i) Each biennial filer and triennial full filer shall establish and implement a process designed to identify each of its critical operations. The scale of the process must be appropriate to the nature, size, complexity, and scope of the covered company's operations. The covered company must review its process periodically and update it as necessary to ensure its continued effectiveness. The covered company shall describe its process and how it is applied as part of its corporate governance relating to resolution planning under § ____.5(d)(1). The covered company must conduct the process described in this paragraph (a)(1) sufficiently in advance of its next resolution plan submission so that the covered company is prepared to submit the information required under §§ ____.5 through ____.7 for each identified critical operation.

(ii) The process required under paragraph (a)(1)(i) of this section must include a methodology for evaluating the covered company's participation in activities and markets that may be critical to the financial stability of the United States. The methodology must be designed, taking into account the nature, size, complexity, and scope of

the covered company's operations, to identify and assess:

(A) The economic functions engaged in by the covered company;

(B) The markets and activities through which the covered company engages in those economic functions;

(C) The significance of those markets and activities with respect to the financial stability of the United States; and

(D) The significance of the covered company as a provider or other participant in those markets and activities.

(2) *Waiver requests.* In connection with the submission of a resolution plan, a covered company that has previously submitted a resolution plan under this part and does not currently have an identified critical operation under this part may request a waiver of the requirement to have a process and methodology under paragraph (a)(1) of this section in accordance with this paragraph (a)(2).

(i) Each waiver request shall be divided into a public section and a confidential section. A covered company shall segregate and separately identify the public section from the confidential section. A covered company shall include in the confidential section of a waiver request its rationale for why a waiver of the requirement would be appropriate, including an explanation of why the process and methodology are not likely to identify any critical operation given its business model, operations, and organizational structure. A covered company shall describe in the public section of a waiver request that it is seeking to waive the requirement.

(ii) Any waiver request must be made in writing at least 15 months before the date on which the covered company is required to submit the resolution plan.

(iii) The Board and Corporation may jointly deny a waiver request in their discretion. Unless the Board and the Corporation have jointly denied a waiver request, the waiver request will be deemed approved on the date that is 9 months prior to the date that the covered company is required to submit the resolution plan to which the waiver request relates.

(b) *Joint identification of critical operations by the Board and the Corporation.* (1) The Board and the Corporation shall, not less frequently than every six years, jointly review the operations of covered companies to determine whether to jointly identify critical operations of any covered company in accordance with paragraph (b)(2) of this section, or to jointly rescind any currently effective joint identification in accordance with paragraph (b)(3) of this section.

(2) If the Board and the Corporation jointly identify a covered company's operation as a critical operation, the Board and the Corporation shall jointly notify the covered company in writing. A covered company is not required to include the information required under §§__.5 through __.7 for the identified critical operation in any resolution plan that the covered company is required to submit within 180 days after the joint notification unless the operation had been identified by the covered company as a critical operation prior to when the Board and the Corporation jointly notified the covered company.

(3) The Board and the Corporation may jointly rescind a joint identification under paragraph (b)(2) of this section by providing the covered company with joint notice of the rescission. Upon the notification, the covered company is not required to include the information regarding the operation required for identified critical operations under §§ ____.5 through ____.7 in any subsequent resolution plan unless:

(i) The covered company identifies the operation as a critical operation; or

(ii) The Board and the Corporation subsequently provide a joint notification under paragraph (b)(2) of this section to the covered company regarding the operation.

(4) A joint notification provided by the Board and the Corporation to a covered company before [effective date of final rule] that identifies any of its operations as a critical operation and not previously jointly rescinded is deemed to be a joint identification under paragraph (b)(2) of this section.

(c) *Request for reconsideration of jointly identified critical operations.* A covered company may request that the Board and the Corporation reconsider a joint identification under paragraph (b)(2) of this section in accordance with this paragraph (c).

(1) *Written request for reconsideration.* The covered company must submit a written request for reconsideration to the Board and the Corporation that includes a clear and complete statement of all arguments and all relevant, material information that the covered company expects to have considered. If a covered company has previously requested reconsideration regarding the operation, the written request must also describe the material differences between the new request and the most recent prior request.

(2) *Timing.* (i) A covered company shall submit a request for reconsideration sufficiently before its next resolution plan to provide the Board and the Corporation with a reasonable period of time to reconsider the joint identification.

(ii) If a covered company submits a request for reconsideration at least 270 days before the date on which it is required to submit its next resolution plan, the Board and the Corporation will complete their reconsideration at least 180 days before the date on which the covered company is required to submit its next resolution plan, except the Board and the Corporation may jointly extend the period for their reconsideration by no more than 90 days. If the Board and the Corporation jointly find that additional information from the covered company is required to complete their reconsideration, the Board and the Corporation will jointly request in writing the additional information from the covered company. The Board and the Corporation will then complete their reconsideration no later than 90 days after receipt of all additional information from the covered company.

(iii) If a covered company submits a request for reconsideration less than 270 days before the date on which it is required to submit its next resolution plan, the Board and the Corporation may, in their discretion, defer reconsideration of the joint identification until after the submission of that resolution plan, with the result that the covered company must include the identified critical operation in that resolution plan.

(3) *Joint communication following reconsideration.* The Board and the Corporation will communicate jointly the results of their reconsideration in writing to the covered company.

(d) *De-identification by covered company of self-identified critical operations.* A covered company may cease to include in its resolution plans the information required under §§ ____.5 through ____.7 regarding an operation previously identified only by the covered company (and not also jointly by the Board and the Corporation) as a critical operation only in accordance with this paragraph (d).

(1) *Notice of de-identification.* If a covered company ceases to identify an operation as a critical operation, the covered company must notify the Board and the Corporation of its de-identification. The notice must be in writing and include a clear and complete explanation of:

(i) Why the covered company previously identified the operation as a critical operation; and

(ii) Why the covered company no longer identifies the operation as a critical operation.

(2) *Timing.* Notwithstanding a covered company's de-identification, and unless otherwise notified in writing jointly by the Board and the Corporation, a covered company shall include the applicable information required under §§ ____.5 through ____.7 regarding an operation previously identified by the covered company as a critical operation in any resolution plan the covered company is required to submit during the period ending 12 months after the covered company notifies the Board and the Corporation in accordance with paragraph (d)(1) of this section.

(3) *No effect on joint identifications.* Neither a covered company's de-identification nor notice thereof under paragraph (d)(1) of this section rescinds a joint identification made by the Board and the Corporation under paragraph (b)(2) of this section.

§ ____.4 Resolution plan required.

(a) *Biennial filers*—(1) *Group members.* Biennial filer means:

(i) Any global systemically important BHC; and

(ii) Any nonbank financial company supervised by the Board that has not been jointly designated a triennial full filer by the Board and Corporation under paragraph (a)(2) of this section or that has been jointly re-designated a biennial filer by the Board and the Corporation under paragraph (a)(2) of this section.

(2) *Nonbank financial companies.* The Board and the Corporation may jointly designate a nonbank financial company supervised by the Board as a triennial full filer in their discretion, taking into account facts and circumstances that each of the Board and the Corporation in its discretion determines to be relevant. The Board and the Corporation may in their discretion jointly re-designate as a biennial filer a nonbank financial company that the Board and the Corporation had previously designated as a triennial filer, taking into account facts and circumstances that each of the Board and the Corporation in its discretion determines to be relevant.

(3) *Frequency of submission.* Biennial filers shall each submit a resolution plan to the Board and the Corporation every two years.

(4) *Submission date.* Biennial filers shall submit their plans by July 1 of each year in which a plan is due.

(5) *Type of plan required to be submitted.* Biennial filers shall alternate submitting a full resolution plan and a targeted resolution plan.

(6) *New covered companies that are biennial filers.* A company that becomes a covered company and a biennial filer after [effective date of final rule] shall submit a full resolution plan on the next date on which other biennial filers are required to submit resolution plans pursuant to paragraph (a)(4) of this section that occurs no earlier than 12 months after the date on which the company became a covered company. The company's subsequent plans shall be of the type required to be submitted by the other biennial filers.

(b) *Triennial full filers*—(1) *Group members.* Triennial full filer means:

(i) Any category II banking organization;

(ii) Any category III banking organization; and

(iii) Any nonbank financial company supervised by the Board that is jointly designated a triennial full filer by the Board and Corporation under paragraph (a)(2) of this section.

(2) *Frequency of submission.* Triennial full filers shall each submit a resolution plan to the Board and the Corporation every three years.

(3) *Submission date.* Triennial full filers shall submit their plans by July 1 of each year in which a plan is due.

(4) *Type of plan required to be submitted.* Triennial full filers shall alternate submitting a full resolution plan and a targeted resolution plan.

(5) *New covered companies that are triennial full filers.* A company that becomes a covered company and a triennial full filer after [effective date of final rule] shall submit a full resolution plan on the next date on which other triennial full filers are required to submit resolution plans pursuant to paragraph (b)(3) of this section that occurs no earlier than 12 months after the date on which the company became a covered company. The company's subsequent plans shall be of the type required to be submitted by the other triennial full filers.

(c) *Triennial reduced filers*—(1) *Group members.* Triennial reduced filer means any covered company that is not a global systemically important BHC, nonbank financial company supervised by the Board, category II banking organization, or category III banking organization.

(2) *Frequency of submission.* Triennial reduced filers shall each submit a resolution plan to the Board and the Corporation every three years.

(3) *Submission date.* Triennial reduced filers shall submit their plans by July 1 of each year in which a plan is due.

(4) *Type of plan required to be submitted.* Triennial reduced filers shall submit a reduced resolution plan.

(5) *New covered companies that are triennial reduced filers.* A company that becomes a covered company and a triennial reduced filer after [effective date of final rule] shall submit a full resolution plan on the next date on which other triennial reduced filers are required to submit resolution plans pursuant to paragraph (c)(3) of this section that occurs no earlier than 12 months after the date on which the company became a covered company. The company's subsequent plans shall be reduced resolution plans.

(d) *General*—(1) *Changing filing groups.* If a covered company that is a member of a filing group specified in paragraphs (a) through (c) of this section (''original group filer'') becomes a member of a different filing group specified in paragraphs (a) through (c) of this section (''new group filer''), then the covered company shall submit its next resolution plan as follows:

(i) If the next date on which the original group filers are required to submit their next resolution plans is the same date on which the other new group filers are required to submit their next resolution plans and:

(A) That date is less than 12 months after the covered company became a new group filer, the covered company shall submit its next resolution plan on that date. The resolution plan may be the type of plan that the original group filers are required to submit on that date or the type of plan that the other new group filers are required to submit on that date.

(B) That date is 12 months or more after the covered company became a new group filer, the covered company shall submit on that date the type of resolution plan the other new group filers are required to submit on that date.

(ii) If the next date on which the original group filers are required to submit their next resolution plan is different from the date on which the new group filers are required to submit their next resolution plans, the covered company shall submit its next resolution plan on the next date on which the other new group filers are required to submit a resolution plan that occurs no earlier than 12 months after the date on which the covered company became a new group filer. The covered company shall submit the type of resolution plan that the other new group filers are required to submit on the date the covered company must submit its next resolution plan.

(iii) Notwithstanding paragraph (d)(1)(i) or (ii) of this section, any triennial reduced filer that becomes a biennial filer or a triennial full filer

shall submit a full resolution plan no later than the next date on which the other new group filers are required to submit their next resolution plans that occurs no earlier than 12 months after the date on which the covered company became a new group filer. After submitting a full resolution plan, the covered company shall submit, on the next date that the other new group filers are required to submit their next resolution plans, the type of resolution plan the other new group filers are required to submit on that date.

(2) *Altering submission dates.* Notwithstanding anything to the contrary in this part, the Board and Corporation may jointly determine that a covered company shall file its resolution plan by a date other than as provided in paragraphs (a) through (d) of this section. The Board and the Corporation shall provide a covered company with written notice of a determination under this paragraph (d)(2) no later than 180 days prior to the date on which the Board and Corporation jointly determined to require the covered company to submit its resolution plan, unless the covered company has not previously submitted a resolution plan, in which case the Board and Corporation shall provide the written notice no later than 12 months prior to the date on which the Board and Corporation jointly determined to require the covered company to submit its resolution plan.

(3) *Authority to require interim updates.* The Board and the Corporation may jointly require that a covered company file an update to a resolution plan submitted under this part, within a reasonable amount of time, as jointly determined by the Board and Corporation. The Board and the Corporation shall notify the covered company of its requirement to file an update under this paragraph (d)(3) in writing, and shall specify the portions or aspects of the resolution plan the covered company shall update.

(4) *Notice of extraordinary events*—(i) *In general.* Each covered company shall provide the Board and the Corporation with a notice no later than 45 days after any material merger, acquisition of assets, or similar transaction or fundamental change to the covered company's resolution strategy. Such notice should describe the event and explain how the event would affect the resolvability of the covered company. The covered company shall address any event with respect to which it has provided notice pursuant to this paragraph (d)(4)(i) in the following resolution plan submitted by the covered company.

(ii) *Exception.* A covered company shall not be required to file a notice under paragraph (d)(4)(i) of this section if the date on which the covered company would be required to submit the notice under paragraph (d)(3)(i) of this section would be within 90 days prior to the date on which the covered company is required to file a resolution plan under this section.

(5) *Authority to require a full resolution plan submission.* Notwithstanding anything to the contrary in this part, the Board and Corporation may jointly require that a covered company submit a full resolution plan within a reasonable period of time.

(6) *Waivers*—(i) *Authority to waive requirements.* The Board and the Corporation may jointly waive one or more of the resolution plan requirements of § ____.5, § ____.6, or § ____.7 for one or more covered companies for any number of resolution plan submissions. A request pursuant to paragraph (d)(6)(ii) of this section is not required for the Board and Corporation to take action pursuant to this paragraph (d)(6)(i).

(ii) *Waiver requests by covered companies.* In connection with the submission of a full resolution plan, a covered company that has previously submitted a resolution plan under this part may request a waiver of one or more of the informational content requirements of § ____.5 in accordance with this paragraph (d)(6)(ii).

(A) A requirement to include any of the following information is not eligible for a waiver at the request of a covered company:

(*1*) Information specified in section 165(d)(1)(A) through (C) of the Dodd-Frank Act (12 U.S.C. 5365(d)(1)(A) through (C));

(*2*) Any core element;

(*3*) Information required to be included in the public section of a full resolution plan under § ____.11(c)(2);

(*4*) Information about the remediation of any previously identified deficiency or shortcoming unless the Board and the Corporation have jointly determined that the covered company has satisfactorily remedied the deficiency or addressed the shortcoming prior to the covered company's submission of the waiver request; or

(*5*) Information about changes to the covered company's last submitted resolution plan resulting from any:

(*i*) Change in law;

(*ii*) Change in regulation;

(*iii*) Guidance from the Board and the Corporation; or

(*iv*) Feedback from the Board and the Corporation, or any material change experienced by the covered company since the covered company submitted that resolution plan.

(B) Each waiver request shall be divided into a public section and a confidential section. A covered company shall segregate and separately identify the public section from the confidential section. A covered company shall include in the confidential section of a waiver request a clear and complete explanation of why:

(*1*) Each requirement sought to be waived is not a requirement described in paragraph (d)(6)(ii)(A) of this section;

(*2*) The information sought to be waived would not be relevant to the Board's and Corporation's review of the covered company's next full resolution plan; and

(*3*) A waiver of each requirement would be appropriate. A covered company shall include in the public section of a waiver request a list of the requirements that the covered company is requesting be waived.

(C) A covered company may not make more than one waiver request for any full resolution plan submission and any waiver request must be made in writing at least 15 months before the date on which the covered company is required to submit the full resolution plan.

(D) The Board and Corporation may jointly deny a waiver request in their discretion. Unless the Board and the Corporation have jointly denied a waiver request, the waiver request will be deemed approved on the date that is 9 months prior to the date that the covered company is required to submit the full resolution plan to which the waiver request relates.

(e) *Access to information.* In order to allow evaluation of a resolution plan, each covered company must provide the Board and the Corporation such information and access to personnel of the covered company as the Board and the Corporation jointly determine during the period for reviewing the resolution plan is necessary to assess the credibility of the resolution plan and the ability of the covered company to implement the resolution plan. In order to facilitate review of any waiver request by a covered company under § ____.3(a)(2) or paragraph (d)(6)(ii) of this section, or any joint identification of a critical operation of a covered company under § ____.3(b), each covered company must provide such information and access to personnel of the covered company as the Board and the Corporation jointly determine is necessary to evaluate the waiver request or whether the operation is a critical operation. The Board and the

Corporation will rely to the fullest extent possible on examinations conducted by or on behalf of the appropriate Federal banking agency for the relevant company.

(f) *Board of directors approval of resolution plan.* Prior to submission of a resolution plan under paragraphs (a) through (c) of this section, the resolution plan of a covered company shall be approved by:

(1) The board of directors of the covered company and noted in the minutes; or

(2) In the case of a foreign-based covered company only, a delegee acting under the express authority of the board of directors of the covered company to approve the resolution plan.

(g) *Resolution plans provided to the Council.* The Board shall make the resolution plans and updates submitted by the covered company pursuant to this section available to the Council upon request.

(h) *Required and prohibited assumptions.* In preparing its resolution plan, a covered company shall:

(1) Take into account that the material financial distress or failure of the covered company may occur under the severely adverse economic conditions provided to the covered company by the Board pursuant to 12 U.S.C. 5365(i)(1)(B);
provision of extraordinary support by the United States or any other government to the covered company or its subsidiaries to prevent the failure of the covered company, including any resolution actions taken outside the United States that would eliminate the need for any of a covered company's U.S. subsidiaries to enter into resolution proceedings; and

(3) With respect to foreign banking organizations, not assume that the covered company takes resolution actions outside of the United States that would eliminate the need for any U.S. subsidiaries to enter into resolution proceedings.

(i) *Point of contact.* Each covered company shall identify a senior management official at the covered company responsible for serving as a point of contact regarding the resolution plan of the covered company.

(j) *Incorporation of previously submitted resolution plan information by reference.* Any resolution plan submitted by a covered company may incorporate by reference information from a resolution plan previously submitted by the covered company to the Board and the Corporation, provided that:

(1) The resolution plan seeking to incorporate information by reference clearly indicates:

(i) The information the covered company is incorporating by reference; and

(ii) Which of the covered company's previously submitted resolution plan(s) originally contained the information the covered company is incorporating by reference and the specific location of the information in the covered company's previously submitted resolution plan; and

(2) The covered company certifies that the information the covered company is incorporating by reference remains accurate in all respects that are material to the covered company's resolution plan.

§ ____.5 Informational content of a full resolution plan.

(a) *In general*—(1) *Domestic covered companies.* A full resolution plan of a covered company that is organized or incorporated in the United States shall include the information specified in paragraphs (b) through (h) of this section with respect to the subsidiaries and operations that are domiciled in the United States as well as the foreign subsidiaries, offices, and operations of the covered company.

(2) *Foreign-based covered companies.* A full resolution plan of a covered company that is organized or incorporated in a jurisdiction other than the United States (other than a bank holding company) or that is a foreign banking organization shall include:

(i) The information specified in paragraphs (b) through (h) of this section with respect to the subsidiaries, branches and agencies, and identified critical operations and core business lines, as applicable, that are domiciled in the United States or conducted in whole or material part in the United States. With respect to the information specified in paragraph (g) of this section, the resolution plan of a foreign-based covered company shall also identify, describe in detail, and map to legal entity the interconnections and interdependencies among the U.S. subsidiaries, branches, and agencies, and between those entities and:

(A) The identified critical operations and core business lines of the foreign-based covered company; and

(B) Any foreign-based affiliate; and

(ii) A detailed explanation of how resolution planning for the subsidiaries, branches and agencies, and identified critical operations and core business lines of the foreign-based covered company that are domiciled in the United States or conducted in whole or material part in the United States is integrated into the foreign-based covered company's overall resolution or other contingency planning process.

(b) *Executive summary.* Each full resolution plan of a covered company shall include an executive summary describing:

(1) The key elements of the covered company's strategic plan for rapid and orderly resolution in the event of material financial distress at or failure of the covered company;

(2) A description of each material change experienced by the covered company since the filing of the covered company's previously submitted resolution plan;

(3) Changes to the covered company's previously submitted resolution plan resulting from any:

(i) Change in law or regulation;

(ii) Guidance or feedback from the Board and the Corporation; or

(iii) Material change described pursuant to paragraph (b)(2) of this section; and

(4) Any actions taken by the covered company since filing of the previous resolution plan to improve the effectiveness of the covered company's resolution plan or remediate or otherwise mitigate any material weaknesses or impediments to effective and timely execution of the resolution plan.

(c) *Strategic analysis.* Each full resolution plan shall include a strategic analysis describing the covered company's plan for rapid and orderly resolution in the event of material financial distress or failure of the covered company. Such analysis shall:

(1) Include detailed descriptions of the:

(i) Key assumptions and supporting analysis underlying the covered company's resolution plan, including any assumptions made concerning the economic or financial conditions that would be present at the time the covered company sought to implement such plan;

(ii) Range of specific actions to be taken by the covered company to facilitate a rapid and orderly resolution of the covered company, its material entities, and its identified critical operations and core business lines in the event of material financial distress or failure of the covered company;

(iii) Funding, liquidity and capital needs of, and resources available to, the covered company and its material entities, which shall be mapped to its identified critical operations and core business lines, in the ordinary course of business and in the event of material

financial distress at or failure of the covered company;

(iv) Covered company's strategy for maintaining operations of, and funding for, the covered company and its material entities, which shall be mapped to its identified critical operations and core business lines;

(v) Covered company's strategy in the event of a failure or discontinuation of a material entity, core business line or identified critical operation, and the actions that will be taken by the covered company to prevent or mitigate any adverse effects of such failure or discontinuation on the financial stability of the United States; provided, however, if any such material entity is subject to an insolvency regime other than the Bankruptcy Code, a covered company may exclude that entity from its strategic analysis unless that entity either has $50 billion or more in total assets or conducts an identified critical operation; and

(vi) Covered company's strategy for ensuring that any insured depository institution subsidiary of the covered company will be adequately protected from risks arising from the activities of any nonbank subsidiaries of the covered company (other than those that are subsidiaries of an insured depository institution);

(2) Identify the time period(s) the covered company expects would be needed for the covered company to successfully execute each material aspect and step of the covered company's plan;

(3) Identify and describe any potential material weaknesses or impediments to effective and timely execution of the covered company's plan;

(4) Discuss the actions and steps the covered company has taken or proposes to take to remediate or otherwise mitigate the weaknesses or impediments identified by the covered company, including a timeline for the remedial or other mitigatory action; and

(5) Provide a detailed description of the processes the covered company employs for:

(i) Determining the current market values and marketability of the core business lines, identified critical operations, and material asset holdings of the covered company;

(ii) Assessing the feasibility of the covered company's plans (including timeframes) for executing any sales, divestitures, restructurings, recapitalizations, or other similar actions contemplated in the covered company's resolution plan; and

(iii) Assessing the impact of any sales, divestitures, restructurings, recapitalizations, or other similar actions on the value, funding, and operations of the covered company, its material entities, identified critical operations and core business lines.

(d) *Corporate governance relating to resolution planning.* Each full resolution plan shall:

(1) Include a detailed description of:

(i) How resolution planning is integrated into the corporate governance structure and processes of the covered company;

(ii) The covered company's policies, procedures, and internal controls governing preparation and approval of the covered company's resolution plan;

(iii) The identity and position of the senior management official(s) of the covered company that is primarily responsible for overseeing the development, maintenance, implementation, and filing of the covered company's resolution plan and for the covered company's compliance with this part; and

(iv) The nature, extent, and frequency of reporting to senior executive officers and the board of directors of the covered company regarding the development, maintenance, and implementation of the covered company's resolution plan;

(2) Describe the nature, extent, and results of any contingency planning or similar exercise conducted by the covered company since the date of the covered company's most recently filed resolution plan to assess the viability of or improve the resolution plan of the covered company; and

(3) Identify and describe the relevant risk measures used by the covered company to report credit risk exposures both internally to its senior management and board of directors, as well as any relevant risk measures reported externally to investors or to the covered company's appropriate Federal regulator.

(e) *Organizational structure and related information.* Each full resolution plan shall:

(1) Provide a detailed description of the covered company's organizational structure, including:

(i) A hierarchical list of all material entities within the covered company's organization (including legal entities that directly or indirectly hold such material entities) that:

(A) Identifies the direct holder and the percentage of voting and nonvoting equity of each legal entity and foreign office listed; and

(B) The location, jurisdiction of incorporation, licensing, and key management associated with each material legal entity and foreign office identified;

(ii) A mapping of the covered company's identified critical operations and core business lines, including material asset holdings and liabilities related to such identified critical operations and core business lines, to material entities;

(2) Provide an unconsolidated balance sheet for the covered company and a consolidating schedule for all material entities that are subject to consolidation by the covered company;

(3) Include a description of the material components of the liabilities of the covered company, its material entities, identified critical operations and core business lines that, at a minimum, separately identifies types and amounts of the short-term and long-term liabilities, the secured and unsecured liabilities, and subordinated liabilities;

(4) Identify and describe the processes used by the covered company to:

(i) Determine to whom the covered company has pledged collateral;

(ii) Identify the person or entity that holds such collateral; and

(iii) Identify the jurisdiction in which the collateral is located, and, if different, the jurisdiction in which the security interest in the collateral is enforceable against the covered company;

(5) Describe any material off-balance sheet exposures (including guarantees and contractual obligations) of the covered company and its material entities, including a mapping to its identified critical operations and core business lines;

(6) Describe the practices of the covered company, its material entities and its core business lines related to the booking of trading and derivatives activities;

(7) Identify material hedges of the covered company, its material entities, and its core business lines related to trading and derivative activities, including a mapping to legal entity;

(8) Describe the hedging strategies of the covered company;

(9) Describe the process undertaken by the covered company to establish exposure limits;

(10) Identify the major counterparties of the covered company and describe the interconnections, interdependencies and relationships with such major counterparties;

(11) Analyze whether the failure of each major counterparty would likely have an adverse impact on or result in the material financial distress or failure of the covered company; and

(12) Identify each trading, payment, clearing, or settlement system of which the covered company, directly or indirectly, is a member and on which

the covered company conducts a material number or value amount of trades or transactions. Map membership in each such system to the covered company's material entities, identified critical operations and core business lines.

(f) *Management information systems.* (1) Each full resolution plan shall include:

(i) A detailed inventory and description of the key management information systems and applications, including systems and applications for risk management, accounting, and financial and regulatory reporting, used by the covered company and its material entities. The description of each system or application provided shall identify the legal owner or licensor, the use or function of the system or application, service level agreements related thereto, any software and system licenses, and any intellectual property associated therewith;

(ii) A mapping of the key management information systems and applications to the material entities, identified critical operations and core business lines of the covered company that use or rely on such systems and applications;

(iii) An identification of the scope, content, and frequency of the key internal reports that senior management of the covered company, its material entities, identified critical operations and core business lines use to monitor the financial health, risks, and operation of the covered company, its material entities, identified critical operations and core business lines; and

(iv) A description of the process for the appropriate supervisory or regulatory agencies to access the management information systems and applications identified in paragraph (f) of this section; and

(v) A description and analysis of:

(A) The capabilities of the covered company's management information systems to collect, maintain, and report, in a timely manner to management of the covered company, and to the Board, the information and data underlying the resolution plan; and

(B) Any gaps or weaknesses in such capabilities, and a description of the actions the covered company intends to take to promptly address such gaps, or weaknesses, and the time frame for implementing such actions.

(2) The Board will use its examination authority to review the demonstrated capabilities of each covered company to satisfy the requirements of paragraph (f)(1)(v) of this section. The Board will share with the Corporation information regarding the capabilities of the covered company to collect, maintain, and report in a timely manner information and data underlying the resolution plan.

(g) *Interconnections and interdependencies.* To the extent not provided elsewhere in this part, each full resolution plan shall identify and map to the material entities the interconnections and interdependencies among the covered company and its material entities, and among the identified critical operations and core business lines of the covered company that, if disrupted, would materially affect the funding or operations of the covered company, its material entities, or its identified critical operations or core business lines. Such interconnections and interdependencies may include:

(1) Common or shared personnel, facilities, or systems (including information technology platforms, management information systems, risk management systems, and accounting and recordkeeping systems);

(2) Capital, funding, or liquidity arrangements;

(3) Existing or contingent credit exposures;

(4) Cross-guarantee arrangements, cross-collateral arrangements, cross-default provisions, and cross-affiliate netting agreements;

(5) Risk transfers; and

(6) Service level agreements.

(h) *Supervisory and regulatory information.* Each full resolution plan shall:

(1) Identify any:

(i) Federal, state, or foreign agency or authority (other than a Federal banking agency) with supervisory authority or responsibility for ensuring the safety and soundness of the covered company, its material entities, identified critical operations and core business lines; and

(ii) Other Federal, state, or foreign agency or authority (other than a Federal banking agency) with significant supervisory or regulatory authority over the covered company, and its material entities and identified critical operations and core business lines.

(2) Identify any foreign agency or authority responsible for resolving a foreign-based material entity and identified critical operations or core business lines of the covered company; and

(3) Include contact information for each agency identified in paragraphs (h)(1) and (2) of this section.

§ ____.6 Informational content of a targeted resolution plan.

(a) *In general.* A targeted resolution plan is a subset of a full resolution plan and shall include core elements of a full resolution plan and information concerning key areas of focus as set forth in this section.

(b) *Targeted resolution plan content.* Each targeted resolution plan of a covered company shall include:

(1) The core elements;

(2) Such targeted information as the Board and Corporation may jointly identify pursuant to paragraph (c) of this section;

(3) A description of each material change experienced by the covered company since the filing of the covered company's previously submitted resolution plan; and

(4) A description of changes to the covered company's previously submitted resolution plan resulting from any;

(i) Change in law or regulation;

(ii) Guidance or feedback from the Board and the Corporation; or

(iii) Material change described pursuant to paragraph (b)(3) of this section.

(c) *Targeted information requests.* No less than 12 months prior to the date a covered company's targeted resolution plan is due, the Board and Corporation may jointly identify resolution-related key areas of focus, questions and issues that must also be addressed in the covered company's targeted resolution plan.

(d) *Deemed incorporation by reference.* If a covered company does not include in its targeted resolution plan a description of changes to any information set forth in section 165(d)(1)(A), (B), or (C) of the Dodd-Frank Act (12 U.S.C. 5365(d)(1)(A), (B), or (C)) since its previously submitted plan, such information from its previously submitted plan are incorporated by reference into its targeted resolution plan.

§ ____.7 Informational content of a reduced resolution plan.

(a) *Reduced resolution plan content.* Each reduced resolution plan of a covered company shall include:

(1) A description of each material change experienced by the covered company since the filing of the covered company's previously submitted resolution plan; and

(2) A description of changes to the strategic analysis that was presented in the covered company's previously submitted resolution plan resulting from any:

(i) Change in law or regulation;

(ii) Guidance or feedback from the Board and the Corporation; or

(iii) Material changes described pursuant to paragraph (a)(1) of this section.

(b) *Deemed incorporation by reference.* If a covered company does

not include in its reduced resolution plan a description of changes to any information set forth in section 165(d)(1)(A), (B), or (C) of the Dodd-Frank Act (12 U.S.C. 5365(d)(1)(A), (B), or (C)) since its previously submitted plan, such information from its previously submitted plan are incorporated by reference into its reduced resolution plan.

§ ____.8 Review of resolution plans; resubmission of deficient resolution plans

(a) *Review of resolution plans.* The Board and Corporation will seek to coordinate their activities concerning the review of resolution plans, including planning for, reviewing, and assessing the resolution plans, as well as such activities that occur during the periods between plan submissions.

(b) *Joint determination regarding deficient resolution plans.* If the Board and Corporation jointly determine that the resolution plan of a covered company submitted under § ____.4 is not credible or would not facilitate an orderly resolution of the covered company under the Bankruptcy Code, the Board and Corporation shall jointly notify the covered company in writing of such determination. Any joint notice provided under this paragraph (b) shall identify the deficiencies identified by the Board and Corporation in the resolution plan. A deficiency is an aspect of a covered company's resolution plan that the Board and Corporation jointly determine presents a weakness that individually or in conjunction with other aspects could undermine the feasibility of the covered company's resolution plan.

(c) *Resubmission of a resolution plan.* Within 90 days of receiving a notice of deficiencies issued pursuant to paragraph (b) of this section, or such shorter or longer period as the Board and Corporation may jointly determine, a covered company shall submit a revised resolution plan to the Board and Corporation that addresses the deficiencies jointly identified by the Board and Corporation, and that discusses in detail:

(1) The revisions made by the covered company to address the deficiencies jointly identified by the Board and the Corporation;

(2) Any changes to the covered company's business operations and corporate structure that the covered company proposes to undertake to facilitate implementation of the revised resolution plan (including a timeline for the execution of such planned changes); and

(3) Why the covered company believes that the revised resolution plan is credible and would result in an orderly resolution of the covered company under the Bankruptcy Code.

(d) *Extensions of time.* Upon their own initiative or a written request by a covered company, the Board and Corporation may jointly extend any time period under this section. Each extension request shall be supported by a written statement of the covered company describing the basis and justification for the request.

(e) *Joint determination regarding shortcomings in resolution plans.* The Board and Corporation may also jointly identify one or more shortcomings in a covered company's resolution plan. A shortcoming is a weakness or gap that raises questions about the feasibility of a covered company's resolution plan, but does not rise to the level of a deficiency for both the Board and Corporation. If a shortcoming is not satisfactorily explained or addressed in or prior to the submission of the covered company's next resolution plan, it may be found to be a deficiency in the covered company's next resolution plan. The Board and the Corporation may identify an aspect of a covered company's resolution plan as a deficiency even if such aspect was not identified as a shortcoming in an earlier resolution plan submission.

§ ____.9 Failure to cure deficiencies on resubmission of a resolution plan

(a) *In general.* The Board and Corporation may jointly determine that a covered company or any subsidiary of a covered company shall be subject to more stringent capital, leverage, or liquidity requirements, or restrictions on the growth, activities, or operations of the covered company or the subsidiary if:

(1) The covered company fails to submit a revised resolution plan under § ____.8(c) within the required time period; or

(2) The Board and the Corporation jointly determine that a revised resolution plan submitted under § ____.8(c) does not adequately remedy the deficiencies jointly identified by the Board and the Corporation under § ____.8(b).

(b) *Duration of requirements or restrictions.* Any requirements or restrictions imposed on a covered company or a subsidiary thereof pursuant to paragraph (a) of this section shall cease to apply to the covered company or subsidiary, respectively, on the date that the Board and the Corporation jointly determine the covered company has submitted a revised resolution plan that adequately remedies the deficiencies jointly identified by the Board and the Corporation under § ____.8(b).

(c) *Divestiture.* The Board and Corporation, in consultation with the Council, may jointly, by order, direct the covered company to divest such assets or operations as are jointly identified by the Board and Corporation if:

(1) The Board and Corporation have jointly determined that the covered company or a subsidiary thereof shall be subject to requirements or restrictions pursuant to paragraph (a) of this section; and

(2) The covered company has failed, within the 2-year period beginning on the date on which the determination to impose such requirements or restrictions under paragraph (a) of this section was made, to submit a revised resolution plan that adequately remedies the deficiencies jointly identified by the Board and the Corporation under § ____.8(b); and

(3) The Board and Corporation jointly determine that the divestiture of such assets or operations is necessary to facilitate an orderly resolution of the covered company under the Bankruptcy Code in the event the company was to fail.

§ ____.10 Consultation.

Prior to issuing any notice of deficiencies under § ____.8(b), determining to impose requirements or restrictions under § ____.9(a), or issuing a divestiture order pursuant to § ____.9(c) with respect to a covered company that is likely to have a significant impact on a functionally regulated subsidiary or a depository institution subsidiary of the covered company, the Board—

(a) Shall consult with each Council member that primarily supervises any such subsidiary; and

(b) May consult with any other Federal, state, or foreign supervisor as the Board considers appropriate.

§ ____.11 No limiting effect or private right of action; confidentiality of resolution plans

(a) *No limiting effect on bankruptcy or other resolution proceedings.* A resolution plan submitted pursuant to this part shall not have any binding effect on:

(1) A court or trustee in a proceeding commenced under the Bankruptcy Code;

(2) A receiver appointed under title II of the Dodd-Frank Act (12 U.S.C. 5381 *et seq.*);

(3) A bridge financial company chartered pursuant to 12 U.S.C. 5390(h); or

(4) Any other authority that is authorized or required to resolve a covered company (including any subsidiary or affiliate thereof) under any other provision of Federal, state, or foreign law.

(b) *No private right of action.* Nothing in this part creates or is intended to create a private right of action based on a resolution plan prepared or submitted under this part or based on any action taken by the Board or the Corporation with respect to any resolution plan submitted under this part.

(c) *Form of resolution plans*—(1) *Generally.* Each full, targeted, and reduced resolution plan of a covered company shall be divided into a public section and a confidential section. Each covered company shall segregate and separately identify the public section from the confidential section.

(2) *Public section of full and targeted resolution plans.* The public section of a full or targeted resolution plan shall consist of an executive summary of the resolution plan that describes the business of the covered company and includes, to the extent material to an understanding of the covered company:

(i) The names of material entities;

(ii) A description of core business lines;

(iii) Consolidated or segment financial information regarding assets, liabilities, capital and major funding sources;

(iv) A description of derivative activities and hedging activities;

(v) A list of memberships in material payment, clearing and settlement systems;

(vi) A description of foreign operations;

(vii) The identities of material supervisory authorities;

(viii) The identities of the principal officers;

(ix) A description of the corporate governance structure and processes related to resolution planning;

(x) A description of material management information systems; and

(xi) A description, at a high level, of the covered company's resolution strategy, covering such items as the range of potential purchasers of the covered company, its material entities, and its core business lines.

(3) *Public section of reduced resolution plans.* The public section of a reduced resolution plan shall consist of an executive summary of the resolution plan that describes the business of the covered company and includes, to the extent material to an understanding of the covered company:

(i) The names of material entities;

(ii) A description of core business lines;

(iii) The identities of the principal officers; and

(iv) A description, at a high level, of the covered company's resolution strategy, referencing the applicable resolution regimes for its material entities.

(d) *Confidential treatment of resolution plans.* (1) The confidentiality of resolution plans and related materials shall be determined in accordance with applicable exemptions under the Freedom of Information Act (5 U.S.C. 552(b)), 12 CFR part 261 (the Board's Rules Regarding Availability of Information), and 12 CFR part 309 (the Corporation's Disclosure of Information rules).

(2) Any covered company submitting a resolution plan or related materials pursuant to this part that desires confidential treatment of the information under 5 U.S.C. 552(b)(4), 12 CFR part 261 (the Board's Rules Regarding Availability of Information), and 12 CFR part 309 (the Corporation's Disclosure of Information rules) may file a request for confidential treatment in accordance with those rules.

(3) To the extent permitted by law, information comprising the Confidential Section of a resolution plan will be treated as confidential.

(4) To the extent permitted by law, the submission of any nonpublic data or information under this part shall not constitute a waiver of, or otherwise affect, any privilege arising under Federal or state law (including the rules of any Federal or state court) to which the data or information is otherwise subject. Privileges that apply to resolution plans and related materials are protected pursuant to Section 18(x) of the Federal Deposit Insurance Act, 12 U.S.C. 1828(x).

§ ____.12 Enforcement

The Board and Corporation may jointly enforce an order jointly issued by the Board and Corporation under § ____.9(a) or (c). The Board, in consultation with the Corporation, may take any action to address any violation of this part by a covered company under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818).

[END OF COMMON TEXT]

List of Subjects

12 CFR Part 243

Administrative practice and procedure, Banks, Banking, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 381

Administrative practice and procedure, Banks, Banking, Holding companies, Reporting and recordkeeping requirements, Resolution plans.

Adoption of the Common Rule Text

The adoption of the common rules by the agencies, as modified by agency-specific text, is set forth below:

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the preamble, the Board of Governors of the Federal Reserve System proposes to revise part 243 to 12 CFR chapter II as set forth in the text of the common rule at the end of the preamble and further amend 12 CFR part 243 as follows:

PART 243—RESOLUTION PLANS (REGULATION QQ)

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

Authority: 12 U.S.C. 5365.

■ 2. The heading of part 243 is revised to read as set forth above.

■ 3. Amend § 243.1(a) by adding a sentence at the end of the paragraph to read as follows:

§ 243.1 Authority and scope.

(a) * * * The Board is also issuing this part pursuant to section 165(a)(2)(C) of the Dodd-Frank Act.

* * * * *

■ 4. Add § 243.13 to read as follows:

§ 243.13 Additional covered companies.

An additional covered company is any bank holding company or any foreign bank or company that is a bank holding company or is treated as a bank holding company under section 8(a) of the International Banking Act of 1978 (12 U.S.C. 3106(a)) that is:

(a) Identified as a category II banking organization pursuant to § 252.5 of this title;

(b) Identified as a category III banking organization pursuant to § 252.5 of this title; or

(c) Made subject to this part by order of the Board.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the preamble, the Federal Deposit Insurance Corporation proposes to revise part 381

to 12 CFR chapter III as set forth in the text of the common rule at the end of the preamble and further amend 12 part 381 as follows:

PART 381—RESOLUTION PLANS

■ 5. The authority citation for part 381 continues to read as follows:

Authority: 12 U.S.C.5365 (d).

§ 381.2 [Amended]

■ 6. In § 381.2(j)(1)(v), add the words ''of this title'' after the phrase ''pursuant to § 243.13''.

By order of the Board of Governors of the Federal Reserve System.

Ann E. Misback,

Secretary of the Board.

Dated at Washington, DC, on April 16, 2019.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 2019–08478 Filed 5–9–19; 8:45 am]

BILLING CODE 6210–01–P; 6714–01–P

FEDERAL REGISTER

Vol. 84 Tuesday,
No. 93 May 14, 2019

Part IV

Federal Reserve System

12 CFR Parts 225 and 238
Control and Divestiture Proceedings; Proposed Rule

FEDERAL RESERVE SYSTEM

12 CFR Parts 225 and 238

[Regulations Y and LL; Docket No. R–1662]

RIN 7100–AF 49

Control and Divestiture Proceedings

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Notice of proposed rulemaking with request for comment.

SUMMARY: The Board is inviting public comment on a proposal that would revise the Board's regulations related to determinations of whether a company has the ability to exercise a controlling influence over another company for purposes of the Bank Holding Company Act or the Home Owners' Loan Act. The proposal would significantly expand the number of presumptions for use in such determinations. By codifying the presumptions in the Board's Regulation Y and Regulation LL, the Board's rules would provide substantial additional transparency on the types of relationships that the Board would view as supporting a determination that one company controls another company. The proposed presumptions generally would be consistent with the Board's historical practice with respect to the types of relationships that raise, or do not raise, significant controlling influence concerns. Several of the proposed presumptions, however, would represent targeted adjustments relative to the Board's historical practice. Finally, the proposal would include various definitions and ancillary rules to ensure that the application of the proposed presumptions is clear, transparent, and consistent.

DATES: Comments must be received by July 15, 2019.

ADDRESSES: You may submit comments, identified by Docket No. R–1662 and RIN 7100–AF 49 by any of the following methods:

- *Agency Website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the docket number and RIN in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Address to Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments will be made available on the Board's website at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.aspx* as submitted, unless modified for technical reasons or to remove sensitive personally identifiable information at the commenter's request. Public comments may also be viewed electronically or in paper form in Room 146, 1709 New York Avenue NW, Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Laurie Schaffer, Associate General Counsel, (202) 452–2272, Alison Thro, Assistant General Counsel, (202) 452–2036, Greg Frischmann, Senior Counsel, (202) 452–2803, Mark Buresh, Counsel, (202) 452–5270, or Brian Phillips, Attorney, (202) 452–3321, Legal Division; Melissa Clark, Lead Financial Institution Policy Analyst, (202) 452–2277, Division of Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. For users of Telecommunication Device for Deaf (TDD) only, call (202) 263–4869.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background and Summary of the Proposal

The Board is seeking comment on proposed revisions to its rules regarding the definition of control in the Bank Holding Company Act (''BHC Act''),[1] and the Home Owners' Loan Act (''HOLA'').[2] Under the BHC Act, control is defined by a three pronged test: A company has control over another company if the first company (i) directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the other company; (ii) controls in any manner the election of a majority of the directors of the other company; or (iii) directly or indirectly exercises a controlling influence over the management or policies of the other company.[3] HOLA includes a substantially similar definition of control.[4] The proposed revisions are intended to provide bank holding companies, savings and loan holding companies, depository institutions, investors, and the public with a better understanding of the facts and circumstances that the Board generally considers most relevant when assessing controlling influence. The increase in transparency due to the proposed rule should provide greater clarity and ensure consistency of decision-making, thereby reducing regulatory burden for banking organizations and investors.

In the Board's experience, investors seeking to avoid the responsibilities and restrictions imposed on bank holding companies and savings and loan holding companies typically structure their investments to avoid the statutory definition of control. Although the first two prongs of the definition of control are bright-line standards that are easily understood by the public, the third prong of the definition of control is a facts and circumstances determination by the Board rather than a bright-line standard. As a result, it is often difficult for an investor seeking to avoid making a controlling investment to ensure that the investment will, in fact, be considered noncontrolling by the Board. Significant minority investors often seek to protect or enhance their investments through multiple forms of engagement with the target company that provide such investors with an opportunity to monitor and influence the target company. Consequently, a significant minority investment can, and often does, raise questions regarding whether

[1] 12 U.S.C. 1841 *et seq.*

[2] 12 U.S.C. 1461 *et seq.*

[3] 12 U.S.C. 1841(a)(2); 12 CFR 225.2(e).

[4] *See* 12 U.S.C. 1467a(a)(2); 12 CFR 238.2(e).

the investor will be able to exercise a controlling influence over the management or policies of the target company.

The determination of whether a company has the ability to exercise a controlling influence over another company is a factual determination. The Board's experience generally has shown that the variety of equity investments, negotiated investment terms, and other business arrangements between investors and targets makes it difficult to prescribe a set of rigid rules that determine whether an investor exercises a controlling influence in all situations. As a result, Board determinations regarding the presence or absence of a controlling influence generally have taken into account the specific facts and circumstances of each case.[5] Nonetheless, the Board has identified a number of factors and thresholds that the Board believes generally would be indicative of the ability or inability of a company to exercise a controlling influence over another company.

Accordingly, the Board is proposing a tiered framework that would substantially revise and clarify the Board's existing regulatory presumptions of control.[6] The proposed tiered framework is designed to incorporate the major factors and thresholds that the Board has typically viewed as presenting controlling influence concerns. The proposal is structured so that, as an investor's ownership percentage in the target company increases, the additional relationships and other factors through which the investor could exercise control generally must decrease in order to avoid triggering the application of a presumption of control. The proposal also would include several other presumptions of control, a new presumption of noncontrol, and additional provisions to clarify how the presumptions would apply in particular circumstances.

The Board intends for the proposed presumptions of control to clarify whether certain common fact patterns are likely to give rise to a controlling influence, which should substantially increase the transparency and consistency of the Board's control framework. Adding the proposed control presumptions to the Board's regulations should help to facilitate permissible investments in banking organizations and by banking organizations.

As a whole, the proposal generally would codify a significant portion of the Board's historical practice with respect to controlling influence. However, the proposal also includes certain targeted adjustments that the Board believes are appropriate based on its experience. In particular, compared to past practice, the proposal would permit an investor to have a greater number of director representatives at the target company without triggering a presumption of control, and would allow investors seeking to terminate an existing control relationship to do so while retaining greater levels of ownership.

A. Description of ''control'' Under the Bank Holding Company Act

Control is a foundational concept under the BHC Act and related statutes.[7] Most notably, control is used to determine the scope of application of the BHC Act. Specifically, a company is a bank holding company if the company directly or indirectly controls a bank. In assessing control, the Board historically has focused on two key purposes of the BHC Act to guide its understanding of the meaning of control and controlling influence. First, the BHC Act was intended to ensure that companies that acquire control of banks have the financial strength and managerial ability to exercise control in a safe and sound manner. Second, the BHC Act was intended to separate banking from commerce by preventing companies with commercial interests from exercising control over banking organizations and by restricting the nonbanking activities of banking organizations.[8]

Under the BHC Act, a company is a bank holding company if it directly or indirectly controls a bank or bank holding company.[9] Accordingly, a company that controls a bank or bank holding company is subject to the Board's regulations and supervisory oversight, which includes regular examinations,[10] financial reporting obligations,[11] capital and liquidity requirements,[12] source of strength obligations,[13] activities restrictions,[14] and restrictions on certain affiliate transactions.[15]

Congress enacted the BHC Act in 1956. In the original BHC Act, Congress defined ''bank holding company'' to mean any company that (1) ''directly or indirectly owns, controls, or holds with power to vote, 25 per centum or more of the voting shares of each of two or more banks or of a company which is or becomes a bank holding company by virtue of this Act, or (2) which controls in any manner the election of a majority of the directors of each of two or more banks.'' [16]

In 1970, Congress made significant amendments to the BHC Act, including significant revisions to the definition of control. The 1970 amendments retained the same core standards in the first two prongs of control from 1956, but added to the definition of control a new third prong. This third prong provided that a company has control over a bank or other company if the ''Board determines after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the bank or company'' (''controlling influence'').[17] Congress included the controlling influence prong to address concerns that a company could structure an investment in a bank below the two bright-line thresholds of control while still having the ''power directly or indirectly to direct or cause the

[5] *See* 12 CFR 225.143; Policy Statement on equity investments in banks and bank holding companies (September 22, 2008), *www.federalreserve.gov/newsevents/press/bcreg/20080922c.htm.*

[6] *See* 12 CFR 225.31 and 238.21.

[7] The following discussion is limited to the BHC Act because the Board's historical experience with control and controlling influence has arisen predominantly in the context of the BHC Act, rather than HOLA. The Board has attempted to apply substantially the same principles in the context of HOLA as it applies in the context of the BHC Act, while also recognizing the limited differences between the statutes with respect to the definition of control. The application of the proposal to savings and loan holding companies is described in greater detail later in this preamble.

[8] *Bank Holding Company Act Amendments: Hearing on H.R. 6778 Before H. Comm. on Banking & Currency,* 91st Cong. 85 (1969).

[9] 12 U.S.C. 1841(a)(1).

[10] 12 U.S.C. 1844(c); 12 CFR 225.5(c).

[11] 12 U.S.C. 1844(c); 12 CFR 225.5(b).

[12] *See, e.g.,* 12 CFR 225 app. C; 12 CFR part 217.

[13] 12 U.S.C. 1831*o*–1.

[14] 12 U.S.C. 1843; 12 CFR 225 subpart C.

[15] 12 U.S.C. 371c and 371c–1; 12 CFR part 223.

[16] Bank Holding Company Act of 1956, Public Law 84–511, 70 Stat. 133 (May 9, 1956). The original BHC Act also defined ''bank holding company'' to include a company that holds 25 percent or more of the voting shares of two or more banks or bank holding companies, if such shares are held by trustees for the benefit of the shareholders or members of the company. to include a company that holds 25 percent or more of the voting shares of two or more banks or bank holding companies, if such shares are held by trustees for the benefit of the shareholders or members of the company. This prong of control was repealed in 1966. *See* An Act to Amend the Bank Holding Company Act of 1956, Public Law 89–485, 80 Stat. 236 (July 1, 1966).

[17] An Act to Amend the Bank Holding Company Act of 1956, Public Law 91–607, 84 Stat. 1760, 1761 (December 31, 1970). HOLA, originally enacted in 1933, contains substantially similar language for its definition of control. Specifically, HOLA defines control by a person of a savings association or other company to include, among other things, ''if the Board determines after reasonable notice and opportunity for hearing, that such person directly or indirectly exercises a controlling influence over the management or policies of such association or other company.'' 12 U.S.C. 1467a(a)(2)(D).

direction of the management or policies of any bank.'' [18]

B. Summary of the Board's Historical Interpretation of ''control'' Under the Bank Holding Company Act

Since the 1970 amendments to the BHC Act, the Board has had numerous occasions to interpret and apply the controlling influence prong of the BHC Act. The Board has long held that controlling influence does not require an investor to exercise complete domination or absolute control over all aspects of the management and policies of a company. Instead, the Board has found that a controlling influence is possible even if the first company is not able to dictate the outcome of a significant matter under consideration.[19] Thus, control requires only ''the mere potential for manipulation of a bank.'' [20]

Historically, in assessing the controlling influence prong, the Board has considered a number of factors, including the size of the first company's voting and total equity investment in the second company; the presence of countervailing shareholders of the second company; the first company's representation on the board of directors or board committees of the second company; any covenants or other agreements that allow the first company to influence or restrict the management decisions of the second company; and the nature and scope of the business relationships between the companies.[21]

The Board provided initial guidance on the controlling influence prong by issuing a limited set of regulatory presumptions of control in 1971.[22] The Board made slight modifications to these presumptions in connection with the comprehensive revisions to Regulation Y in 1984.[23] The Board has not materially modified these regulatory presumptions of control since 1984.

The Board also has issued various public policy statements to provide guidance regarding the controlling influence prong of the BHC Act. In 1982, for example, the Board issued a Policy Statement on Nonvoting Equity Investments by Bank Holding Companies (the ''1982 Policy Statement'').[24] The 1982 Policy Statement outlined the standards that the Board would consider in reviewing whether an investment in a banking organization would result in the Board determining that the investor was able to exercise a controlling influence over the management or policies of the banking organization. The 1982 Policy Statement focused on issues of particular concern in the 1980s in the context of investments by bank holding companies in out-of-state banking organizations. For example, the 1982 Policy Statement addressed investments that included a long-term merger or stock purchase agreement between the investor and the target banking organization that would be triggered upon a change in the interstate banking laws, as well as so-called ''lock-up'' arrangements designed to prevent another company from acquiring the target banking organization without the permission of the investor.

The Board recognized in the 1982 Policy Statement that the complexity of minority investments precluded rigid rules designed to cover all situations of control. As a result, the Board noted that decisions regarding the existence of control in any particular case generally should take into account the combination of provisions and covenants in the agreement as a whole and the particular facts and circumstances of each case. Nevertheless, the Board articulated certain factors in the 1982 Policy Statement that provided guidance for bank holding companies to understand the concept of controlling influence. For example, the 1982 Policy Statement noted that certain common contractual covenants substantially limited the discretion of the target company's management over major policies and decisions, such as restrictions on entering into new banking activities without the investor's approval and requirements for extensive consultations with the investor on financial matters.[25] The Board indicated that covenants of this type likely would constitute a controlling influence by the investing company over the target company.[26]

In 2008, the Board issued another policy statement on equity investments in banks and bank holding companies to clarify its views on controlling influence (the ''2008 Policy Statement'').[27] In the 2008 Policy Statement, the Board stated that it had reviewed its experience with director interlocks, limits on the amount of nonvoting shares that could be held in combination with voting shares, and the scope of discussions that minority investors could have with management of the banking organization. The Board noted that it continued to believe that a determination of whether an investor could exercise a controlling influence over a banking organization depended on the consideration of all the facts and circumstances of each case. The Board, however, provided guidance on certain types of relationships that generally would not raise controlling influence concerns. For example, the Board noted that it generally would not find a controlling influence if a minority investor had a single director representative on the board of directors of a banking organization. In addition, the Board noted that a representative of a noncontrolling investor who serves on the board of directors of the banking organization generally should not serve as the chair of the board of the banking organization or as the chair of a committee of the board of the banking organization. The 2008 Policy Statement noted that representatives of a noncontrolling investor could serve as members of committees of the board of the banking organization without raising significant control concerns, provided that the director representatives did not occupy more than 25 percent of the seats on any committee and the committee did not have the authority or practical ability to make or block major policy decisions of the banking organization.

Regarding nonvoting equity investments, the Board noted in the 2008 Policy Statement that the overall size of an equity investment, including both voting and nonvoting equity, was an important indicator of the degree of influence an investor could have. Accordingly, the Board noted that, in most circumstances, an investor that owns 25 percent or more of the total equity of a banking organization owns enough of the capital resources of a banking organization to have a controlling influence over the

[18] *Bank Holding Company Act Amendments: Hearing on H.R. 6778 Before H. Comm. on Banking & Currency,* 91st Cong. 87 (1969).

[19] *Patagonia Corp.,* 63 *Federal Reserve Bulletin* 288 (1977) (citing *Detroit Edison Co.* v. *SEC.,* 119 F.2d 738, 739 (6th Cir. 1941) (interpreting ''controlling influence'' in the Public Utility Holding Company Act, which has a nearly identical definition of control as in the BHC Act, to not ''necessarily [require] those exercising a controlling influence [to] be able to carry their point.'' Rather a controlling influence can be effective ''without accomplishing the purpose fully'')).

[20] *Interamericas Investments, Ltd.* v. *Bd. of Governors of the Fed. Reserve Sys.,* 111 F.3d 376, 383 (5th Cir. 1997).

[21] A relationship between two companies may raise supervisory or other concerns whether or not the relationship raises controlling influence concerns.

[22] 36 FR 18945 (Sept. 24, 1971).

[23] 49 FR 794, 817, 828–29 (Jan. 5, 1984).

[24] *See* 68 Federal Reserve Bulletin 413 (July 1982) (codified at 12 CFR 225.143).

[25] 12 CFR 225.143(c)(4).

[26] *Id.*

[27] *See* Policy Statement on equity investments in banks and bank holding companies (September 22, 2008). The Board did not rescind the 1982 Policy Statement, and that statement continues to reflect the Board's views on questions of control to the extent not superseded by the 2008 Policy Statement.

management or policies of the banking organization. However, the Board noted that it would not expect an investor to have a controlling influence over a banking organization if the investor owned a combination of voting shares and nonvoting shares that, when aggregated, represented less than one-third of the total equity of the organization and less than 15 percent of every class of voting securities of the organization.

The Board also extensively discussed business relationships in the 2008 Policy Statement. The Board noted that not all business relationships provided an investor the ability to exercise a controlling influence over the management or policies of a banking organization. The Board explained that it did not have significant control concerns with business relationships that were quantitatively limited and qualitatively nonmaterial, particularly in situations where a noncontrolling investor's percentage of voting securities in the banking organization was closer to 10 percent than 25 percent. As such, the Board noted that it would pay particular attention to the size of proposed business relationships and to whether the relationships would be on market terms, nonexclusive, and terminable without penalty by the banking organization.

C. Summary of Proposal

Based on its historical experience with the controlling influence prong of the BHC Act, the Board is proposing to substantially revise and augment its regulations regarding control.[28] The proposed tiered presumptions of control are designed to enhance transparency and improve consistency of outcomes for controlling influence questions under the BHC Act and HOLA. The discussion that follows explains the proposed revisions to the existing presumptions of control, and sets forth and explains the proposed new presumptions of control and noncontrol.

As discussed elsewhere in this proposal, the BHC Act and HOLA provide that control due to controlling influence only arises once the Board determines, based on the facts presented and after notice and opportunity for a hearing, that a company controls another company. The proposed presumptions are intended to assist the Board in conducting such a hearing or other proceeding and to provide additional information to the public regarding the circumstances in which the Board believes that controlling influence is likely to exist. Notwithstanding the presumptions of control or noncontrol, the Board may or may not find there to be a controlling influence based on the facts and circumstances presented by a particular case. However, the Board generally would not expect to find that a company controls another company unless the first company triggers a presumption of control with respect to the second company.

This proposal relates solely to the issue of whether an investment, alone or in combination with other relationships, raises controlling influence concerns. The Board may have safety and soundness or other concerns arising out of either controlling or noncontrolling relationships.[29] Thus, that an investment would not be presumed to be controlling would not mean that the investment and all other aspects of the relationship would necessarily be consistent with safe and sound banking practices or other expectations or requirements of the Board. The Board retains the right to examine all banking entities under its jurisdiction for potential safety and soundness or other concerns.

II. Proposed Presumptions of Control and Noncontrol

A. Control Hearings and the Role of Presumptions of Control and Noncontrol

As noted, the BHC Act provides that control due to controlling influence arises following a Board determination that a company controls another company. The proposed presumptions of control are intended to assist the Board in reaching such a determination and to provide additional public information regarding the Board's views on controlling influence.

Under the procedures currently in Regulation Y and under the proposal, the Board, in its discretion, may issue a preliminary determination of control if it appears that a company has the power to exercise a controlling influence over a bank or other company. A company that receives a preliminary determination of control must respond within 30 days with (i) a plan to terminate the control relationship; (ii) an application for the Board's approval to have control; or (iii) a response contesting the preliminary determination, setting forth supporting facts and circumstances, and, if desired, requesting a hearing or other proceeding. If a company contests a preliminary determination and requests a hearing or other proceeding, then the Board shall order a hearing or other appropriate proceeding if material facts are in dispute. The proposed presumptions would apply at such a hearing or other proceeding in accordance with the Federal Rules of Evidence and the Board's Rules of Practice for Formal Hearings. After considering all relevant facts and circumstances, including information gathered during any hearing or other proceeding, the Board would issue a final order stating its determination on controlling influence.

B. Description of Indicia of Control

The proposed rule would incorporate some of the Board's common historical considerations for assessing whether a company, typically a minority equity investor, has the power to exercise a controlling influence over the management or policies of another company. The proposal would not cover all facts and circumstances that could potentially relate to controlling influence due to an investor's investment in, and relationship with, another company. Although the proposal generally would be consistent with historical practice, in some instances the proposed rule would adjust the Board's past practices. Overall, the proposed rule would substantially expand on the existing rebuttable presumptions of control in section 225.31 of Regulation Y to include additional rebuttable presumptions of control, and a new rebuttable presumption of noncontrol. Generally, these rebuttable presumptions would be structured based on specified thresholds of voting ownership and the scope of different relationships between companies that the Board believes may justify a determination of control. Absent unusual circumstances, the Board generally would not expect to find that a company controls another company where the first company is not presumed to control the second company under the proposal.

[28] The Board has issued two additional policy statements that are relevant to the meaning of control and controlling influence: ''Statement of policy concerning divestitures by bank holding companies'' (12 CFR 225.138) and ''Presumption of continued control under section 2(g)(3) of the Bank Holding Company Act'' (12 CFR 225.139). These more targeted policy statements are discussed further below in the context of the proposed presumption related to divestiture of control.

[29] Most notably, contractual covenants and business relationships between companies may raise safety and soundness and other concerns where the relationship between the companies does not raise controlling influence concerns. For example, a contractual provision may not allow a company to restrict substantially the discretion of a banking organization, but may impose financial obligations on the second company that are inconsistent with safe and sound operation of the banking organization.

The rebuttable presumptions of control would be based on the types and levels of relationships that the Board historically has viewed as allowing one company to have the power to exercise a controlling influence over another company, including: (i) The size of the first company's voting equity investment in the second company; (ii) the size of the first company's total equity investment in the second company; (iii) the first company's rights to director representation and committee representation on the board of directors of the second company; (iv) the first company's use of proxy solicitations with respect to the second company; (v) management, employee, or director interlocks between the companies; (vi) covenants or other agreements that allow the first company to influence or restrict management or operational decisions of the second company; and (vii) the scope of the business relationships between the companies.[30]

Voting and Nonvoting Equity Investments

A company's voting ownership in another company is typically the most direct mechanism through which control is exercised. The greater the first company's voting ownership in the second company, the greater the ability of the first company to exercise significant influence over the management and policy decisions of the second company by voting its shares on issues presented to the shareholders or by voting on director nominees. Thus, a company with significant voting ownership in a second company has a direct and effective lever by which to influence the second company.

Similarly, as a company's economic interest in another company increases, it provides a powerful incentive for the first company to wield its influence over the second company to protect or grow its investment. This incentive to wield influence due to significant economic exposure does not require the first company's shares to be voting shares. An investor with a substantial equity position in a company has a significant amount of money at stake in the enterprise and is among the first to absorb losses if the banking organization has financial difficulties. Moreover, a company is likely to pay heed to its large shareholders (voting or nonvoting) to help ensure it has the ability to raise additional equity capital in the future and to prevent the negative market signal that would be created by the sale of a large block of voting or nonvoting equity by an existing shareholder. Based on these considerations, the Board historically has been concerned with nonvoting equity interests in addition to voting ownership as a potential means of exercising a controlling influence.

Director Representation

Director representatives of an investor also can provide the investor with a mechanism through which to exercise a controlling influence over the management and policies of another company. For example, director representatives allow the investor to access information of the company that might not otherwise be accessible. In addition, director representatives participate in decisions regarding major operations and policies of the company. Accordingly, the Board has historically limited a noncontrolling investor's director representation to one or two director representatives. The Board continues to believe that director representatives are a significant conduit through which an investor could exercise a controlling influence.

Proxy Solicitations

Historically, the Board has taken the position that a significant investor may raise controlling influence concerns by soliciting proxies contrary to the recommendations of the board of directors of a company. By definition, proxy solicitations are related to matters presented to the shareholders of a company for a vote. These matters include regular matters, such as the election of directors, or special matters, such as major transactions. How shareholders vote on these matters can have a significant impact on the management and policies of the company, which is why proxy solicitations may raise controlling influence issues. However, the Board also has recognized that noncontrolling shareholders may exercise certain of their core rights as shareholders and that it is important that the Board's standards balance normal shareholder activities with controlling influence concerns.

Management Interlocks

Management interlocks are another mechanism through which a company may exercise a controlling influence over a second company. A management interlock exists when a management official of a company is also a management official of another company. Management interlocks can permit the first company to gather nonpublic information regarding the second company. In addition, a management official associated with the first company can advocate, or in some cases decide, that the second company adopt policies supported by the first company. Accordingly, the ability of the first company to have management officials at the second company, combined with an equity interest, provides the first company with the ability and incentive to influence the management or policies of the second company.

Contractual Rights That Influence or Restrict Management Policies or Operations

Contractual provisions that provide a company with a right to influence or restrict the management, policies, or operations of another company may present controlling influence concerns. Specifically, contractual provisions may present controlling influence concerns when they give a company veto rights or effective veto rights over management, policies, or operations of a second company. Not all restrictive contractual rights raise significant controlling influence concerns. In particular, the Board is aware that standard debtor-creditor covenants often impose material restrictions; however, the Board does not believe that such restrictions, in the context of a debtor-creditor relationship, by themselves raise controlling influence concerns. Instead, the Board is concerned when material equity ownership is combined with contractual provisions that restrict the management, policies, or operations of the second company because the contractual rights may be used to enhance a company's influence as an equity investor.[31]

Business Relationships

The Board has traditionally raised controlling influence concerns when a company has both a material equity investment and material business transactions or relationships with another company. The Board has historically taken the view that a major supplier, customer, or lender to a company can exercise considerable influence over the company's management and policies, especially when combined with a sizeable voting investment, by threatening to terminate or change the terms of the business relationship. The Board also has noted, however, that not all business relationships provide an investor with a

[30] *See* 2008 Policy Statement.

[31] Contractual provisions that raise controlling influence concerns may often raise safety and soundness concerns. For example, a contractual provision that restricts the ability of a company to issue additional common stock restricts the discretion of a company and limits the ability of the company to raise additional capital going forward.

controlling influence over the management and policies of their business counterparties. Accordingly, the Board has not viewed business relationships that are quantitatively limited and qualitatively nonmaterial as raising significant controlling influence concerns.[32]

The Board continues to believe that certain material business relationships between an investor and a target company raise significant controlling influence concerns. The combination of a material voting stake in a company, combined with material business relationships, frequently provides both a mechanism and incentive to exert a controlling influence over the management and policies of the company.[33]

C. Description of the Proposed Tiered Presumptions

As discussed previously, a core consideration for control established by Congress in the BHC Act is the percentage of voting securities that a company controls of a second company. Under the statute, a company that controls 25 percent or more of any class of voting securities of a second company controls the second company.[34] Similarly, under the statute, a company that controls less than 5 percent of any class of voting securities of a company is presumed not to control the second company.[35] This statutory framework leaves a space between 5 percent and 25 percent of a class of voting securities where a company is neither presumed to control a second company nor presumed not to control a second company. For companies within this range of voting ownership, the Board has considered the full facts and circumstances of the relationship between the two companies when determining whether the first company controls the second company, consistent with the controlling influence prong of the BHC Act.[36]

The framework established by Congress implies that a company with a level of voting ownership at the higher end of the range—closer to 25 percent—is more likely to control the second company. Similarly, the statutory framework implies that a company with a level of voting ownership at the lower end of the range—closer to 5 percent—is less likely to control the second company. The Board's experience supports these implications. As a result, where a company's voting ownership percentage falls within this range is one of the most salient considerations for determining whether the first company controls the second company. Nonetheless, to support a determination of control for a company that controls less than 25 percent of any class of voting securities of a second company, additional factors relating to the ability to exercise a controlling influence generally should be considered.

The proposal would provide a series of presumptions of control for use by the Board in control proceedings and other control determinations. These presumptions are arranged in tiers based on the level of voting ownership of the first company in the second company. Each of these presumptions would apply where the first company has at least a specified level of voting ownership in a second company, and another specified relationship with the second company. The presumptions would be keyed off of three levels of voting ownership: 5 percent, 10 percent, and 15 percent. Five percent is the level of voting ownership at which the statutory presumption of noncontrol ceases to apply.[37] Ten percent is a level of voting ownership used by the Board in other circumstances to identify major investors in banking organizations.[38] Finally, investors at the level of 15 percent or higher are significant investors closer to statutory control at 25 percent than presumed noncontrol at less than 5 percent.[39]

Since Congress added the controlling influence prong to the BHC Act in 1970, the Board has had substantial experience analyzing whether the facts and circumstances of a particular relationship between two companies provide one company with the ability to control the other company. From this experience, the Board has been able to identify certain relationships between companies in addition to voting ownership that are important in determining whether the overall relationship provides a company the ability to exercise a controlling influence over the other company.

Many of these control factors vary in magnitude. For example, the level of business relationships between two companies can range from minimal to very significant, and a more significant business relationship provides a greater means of exercising (and a greater incentive to exercise) a controlling influence than a less significant business relationship. In recognition of this, the proposal would generally presume that higher levels of business relationships, combined with higher levels of voting ownership, increase the ability to exercise a controlling influence. Thus, the proposal would essentially aggregate the means by which a company could exercise a controlling influence—including the combination of control over voting securities and the significance of business relationships—to determine if the threshold for exercising a controlling influence is met. Under this approach, the proposal would presume that a company can exercise a controlling influence if it has high levels of voting ownership and business relationships of lesser magnitude, or, alternatively, lower levels of voting ownership and business relationships of more substantial magnitude.

Director Representation

The Board has long considered a company's level of representation on the board of directors of a second company as an important factor for controlling influence. Traditionally, the board of directors of a company is the body that makes strategic decisions and establishes major policies for the company. Indeed, one of the most important rights of holders of voting securities of a company is the ability to participate in the selection of the members of the board of directors of the company. Under recent precedent, the Board generally has considered a single director representative to be the maximum director representation for a noncontrolling investor with at least 10 percent of a class of voting securities.[40] The Board, however, has considered a second director representative to be consistent with status as a noncontrolling investor when two director representatives represent a share of the target company's board that is proportional to the investor's voting ownership in the company and when there is another larger shareholder that controls the company.[41]

For a company that controls 5 percent or more of any class of voting securities of a second company, the proposal would presume control if the first company controlled a quarter or more of

[32] *See* 2008 Policy Statement.

[33] Business relationships may raise safety and soundness concerns whether or not controlling influence concerns are raised. For example, business relationships may present excessive counterparty or compliance risks even if controlling influence is not implicated. Further, changes in business relationships and the companies involved may give rise to control or safety and soundness concerns under future circumstances.

[34] 12 U.S.C. 1841(a)(2)(A).

[35] 12 U.S.C. 1841(a)(3).

[36] 12 U.S.C. 1841(a)(2)(C).

[37] 12 U.S.C. 1841(a)(3).

[38] *See, e.g.,* 12 CFR 225.2(n)(2); 12 CFR 225.41(c)(2).

[39] The Board has used 15 percent as a relevant threshold in certain control precedents. *See, e.g.,* 2008 Policy Statement at 10.

[40] 2008 Policy Statement at 6.

[41] 2008 Policy Statement at 7.

the board of directors of the second company. At over 5 percent of a class of voting securities, the voting power of the first company is substantial and in excess of the threshold under which the first company would be presumed not to control the second company under the BHC Act. When this material level of voting power is combined with control over a quarter or more of the board of directors, the influence of the first company is likely to be substantial enough to constitute a controlling influence. However, the proposed presumption is designed to allow a less than 25 percent voting shareholder to vote its shares to elect a proportional share of the members of the board of directors of the second company without triggering a presumption of control. The proposal would provide a more permissive director representation standard for 10 to 24.9 percent investors than current practice.

In addition, the proposal would presume that a company that controls 5 percent or more of any class of voting securities of a second company controls the second company if the first company has director representatives that are able to make or block the making of major operational or policy decisions of the second company. This is intended to account for supermajority voting requirements, individual veto rights, or any similar unusual provision that would allow a minority of the board of directors of the second company to control effectively major operational or policy decisions of the second company.

Furthermore, for a company that controls less than 5 percent of every class of voting securities of a second company, the proposal would not include a presumption of control by the first company based on the level of director representation of the first company. As a result, a company with less than 5 percent of every class of voting securities of a second company would generally only control the second company due to director representation if the first company controls a majority of the board of directors of the second company and thereby controls the second company under the second prong of the definition of control in the BHC Act.

Question 1: Should the proposed presumption instead allow an investor to have director representation that is proportional to its voting percentage without triggering a presumption of control? Or, should the proposed presumption require an inverse relationship between voting percentage and director representation to avoid triggering a presumption of control?

In addition to the number of director representatives that one company has on the board of directors of a second company, the proposed presumptions would consider certain roles that director representatives may have that increase the ability of a particular director to affect the decisions of a company. For instance, serving as chair of the board of directors is generally a position of heightened influence. The chair of the board of directors is generally recognized as a leader of both the company and the board of directors. The chair often has powers that other directors do not have, such as the ability to set the agenda for meetings of the board of directors.

Similarly, certain committees of the board of directors are granted the power to take certain actions that bind the company without the need for approval by the full board of directors. In the Board's experience, examples of committees that may have these powers include the audit committee, compensation committee, and executive committee. As a result, the Board may have controlling influence concerns if director representatives of a company occupy a substantial proportion of the seats on a committee of the board of directors of a second company that has the power to take action that binds the company.

To recognize the enhanced power wielded by directors in the positions described in the paragraphs above, the proposal would include a presumption of control if the first company controls 15 percent or more of any class of voting securities of a second company and if any director representative of the first company also serves as the chair of the board of directors of the second company.

Regarding committee service, the proposal would include a presumption of control if a company controls 10 percent or more of any class of voting securities of a second company and the director representatives of the first company occupy more than a quarter of the positions on any board committee of the second company with power to bind the company without the need for additional action by the full board of directors.

These presumptions are similar to, but modestly more permissive than, the Board's historic position with respect to the roles of director representatives. Historically, the Board has raised controlling influence concerns when a company controls 10 percent or more of any class of voting securities of a second company and has a director representative serving as chair of the board of directors of the second company. As noted, however, the proposed chair presumption would apply only if a company controls 15 percent or more of any class of voting securities of a second company. Fifteen percent has been chosen because, as discussed elsewhere in this proposal, 15 percent represents a very significant level of ownership that is closer to statutory control at 25 percent than presumed noncontrol at less than 5 percent.

Regarding committee service, the Board historically has raised controlling influence concerns when a company controls 10 percent or more of a class of voting securities of a second company and has a director representative serving on a committee that has the power to bind the company or serving on a committee with fewer than four members. As noted, the proposal would presume control only if a company controls 10 percent or more of any class of voting securities of a second company and director representatives of the first company occupy more than a quarter of the seats on any committee of the board of directors of the second company that has the power to bind the second company. The power of a director representative serving on such a committee is based to a significant extent on the size of the committee, just as the size of the full board affects the power of an individual director. Accordingly, the presumption for director representation at the committee level is designed to mirror approximately the level of director representation that would be permitted at the second company's board of directors without triggering a presumption of control.

Question 2: Should the chair of the board presumption include a distinction based on whether the shares of the second company are widely held? Does the chair's role in a public company versus a private company provide a greater or lesser ability to exercise a controlling influence and, if so, how should the proposed presumption recognize this difference?

Question 3: Should the committee presumption be modified to take into account the different scope of authority that may be exercised by different committees? For example, some committees might be empowered to make only very specific decisions on behalf of the company—such as an audit committee selecting the outside auditor—while other committees might be empowered generally to make decisions on behalf of the company—such as some executive committees. Should the presumption take this or any similar considerations into account and,

if so, what standard should the Board use to differentiate committees with sufficient powers to raise control concerns from committees with more limited powers?

The proposal also would include a presumption regarding the solicitation of proxies for the election of directors. Historically, the Board has raised control concerns when a company that controls 10 percent or more of a class of voting securities of a second company solicits proxies in opposition to the recommendation of the board of directors of the second company. A significant investor organizing other shareholders to replace members of the board of directors, for example, could be a way for the investor to influence the existing members of the board of directors, even those members of the board of directors that the investor has not targeted for removal.

The proposal would include a more narrow form of this presumption. Specifically, a presumption of control would be triggered if a company that controls 10 percent or more of any class of voting securities of a second company solicits proxies to appoint a number of directors that equals or exceeds a quarter of the total directors on the board of directors of the second company. This would align the presumption for proxy solicitations to elect directors with the proposed presumption for having director representatives. As a result, a company would be able to conduct a proxy solicitation in opposition to the board of directors of a second company without triggering a presumption of control, so long as the number of directors proposed in the proxy, together with any other director representatives of the first company, was not greater than the number of director representatives that the first company could have on the board of directors of the second company. This would allow investors somewhat greater ability to engage in standard shareholder activities without raising significant control concerns.

Business Relationships

The Board has long considered whether a company's business relationships with a second company could provide a mechanism through which the first company could exercise a controlling influence over the second company. The Board has considered both the size and nature of the business relationships between two companies, as well as whether the business relationships are on market terms.

The Board historically has taken the view that a major supplier, customer, or lender to a banking organization could exercise considerable influence over the banking organization's management and policies, especially when coupled with a sizeable voting stock investment. In particular, a business relationship between an investor and another company that accounts for a substantial portion of the revenues or expenses of either company may create a financial incentive for the first company to attempt to influence the second company. Furthermore, the business relationship may provide a means for the first company to exert influence over the second company, for example by threatening to terminate or alter the business relationship if the second company does or does not take a particular action. This ability to influence is heightened when the business relationship is substantial or if the second company is dependent on the relationship. Thus, a company with an equity investment in a second company could enhance its influence over the second company through significant business relationships with the second company.

Under the proposal, the Board would presume control in the following circumstances: (i) If a company controls 5 percent or more of any class of voting securities of a second company and has business relationships with the second company that generate in the aggregate 10 percent or more of the total annual revenues or expenses of the first company or the second company; (ii) if a company controls 10 percent or more of any class of voting securities of a second company and has business relationships that generate in the aggregate 5 percent or more of the total annual revenues or expenses of the first company or the second company; or (iii) if a company controls 15 percent or more of any class of voting securities of a second company and has business relationships that generate in the aggregate 2 percent or more of the total annual revenues or expenses of the first company or the second company.

The Board's control precedents with respect to business relationships have varied significantly based on the facts and circumstances presented. These proposed thresholds would be roughly in line with certain Board precedents, but may be more permissive than certain other precedents. The Board believes that the proposed business relationship presumptions are appropriate based on its historical experience considering issues of controlling influence arising from a combination of control over voting securities and business relationships.

Question 4: The proposal would quantify business relationships based on the percentage of total annual revenues and expenses of the first company and the second company. What types of business relationships that might raise control concerns would not be captured by these metrics but would be captured by other metrics, such as assets or liabilities? What additional metrics, if any, should the Board consider for purposes of these proposed presumptions?

Question 5: Should the Board permit greater or lesser amounts of business relationships under the proposed presumptions? If so, what levels of greater or lesser business relationships should be permitted without triggering a presumption of control?

Question 6: Are there particular business relationships, such as funding relationships, that raise controlling influence concerns regardless of their quantitative impact on the financial statements of the first company or the second company?

Question 7: Should the presumptions incorporate limits on business relationships in light of the economic significance of such relationships to both the first company and the second company? Would it be appropriate to apply different thresholds in the presumptions to measure the materiality of a business relationship to the first company versus the second company?

Question 8: Is the proposed measurement of business relationships for purposes of the presumptions sufficiently clear? Would companies have any difficulty measuring the economic significance of a business relationship as described in the presumptions? If so, would a shorter measurement period (*e.g.,* quarterly) *or a longer measurement period be appropriate? Is the proposed annual measurement period appropriate for all business relationships or should the proposal provide alternative standards for certain relationships?*

In addition, if a company is able to enter into a business relationship with a second company on terms that are more favorable than market terms, it is likely that the first company has a significant level of influence over the second company. As such, the Board would presume control if a company controls 10 percent or more of any class of voting securities of a second company and has business relationships with the second company that are not on market terms.

Question 9: Is the proposed market terms presumption necessary or appropriate? What standards should the Board apply in this context to determine whether a business relationship is on market terms?

Senior Management Interlocks

The officers of a company wield significant power over the company because they implement the major policies set by the board of directors, make all the ancillary policy decisions necessary for implementation, and operate the company on a day-to-day basis. In addition, officers often make recommendations to the board of directors regarding major policy decisions. As a result of this substantial degree of influence, the Board historically has viewed situations where an agent of a significant investor company serves as a management official of another company as providing a significant avenue for the first company to exercise a controlling influence over the second company. Specifically, the Board generally has found controlling influence if a company controls 10 percent or more of a class of voting securities of a second company and has any management official interlock with the second company.

The proposal would presume control if a company that controls 5 percent or more of any class of voting securities of a second company has more than one senior management interlock with the second company. In addition, the proposal would include a presumption of control if a company that controls 15 percent or more of any class of voting securities of a second company has any senior management interlock with the second company. In order to trigger either of these presumptions, the individual would have to serve as an employee or director at the first company and as a senior management official at the second company. Senior management official would be defined as any person who participates or has the authority to participate (other than in the capacity as a director) in major policymaking functions of the company. This definition would help provide clarity around which individuals would be covered by the senior management interlock presumptions and would reflect a slight liberalization of current practice by limiting the presumptions to senior management officials, rather than management officials more generally.

In addition, the proposal would presume control if a company that controls 5 percent or more of any class of voting securities of a second company has an employee or director who serves as the chief executive officer (or an equivalent role) of the second company. The chief executive officer of a company is generally the most powerful executive officer of the company. The proposed chief executive officer presumption would be more conservative than current practice, which does not provide for specific treatment for an interlock involving a chief executive officer and which generally does not raise controlling influence concerns based on interlocks with a company that controls less than 10 percent of a class of voting securities.

Question 10: Should the Board maintain, raise, or lower the proposed voting ownership threshold at which a company would be presumed to control a second company if there is a single senior management official interlock? Other than chief executive officer, are there any other common senior management positions that should be subject to a specific presumption of control? Should the Board expand the senior management interlock presumption to include, for example, all management officials of the second company?

Contractual Limits on Major Operational or Policy Decisions

A company often acquires control over voting securities of a second company under a contractual agreement that includes various covenants between the companies. A company that controls a material amount of voting securities of a second company also may have contractual arrangements with the second company, such as investment agreements, debt relationships, service agreements, or other business relationships. Often, these contractual rights do not raise controlling influence concerns because the rights, for example, are very limited in scope or reinforce the protections provided to the investor under the law. However, the Board has viewed many of these contractual agreements as raising controlling influence concerns when the agreement has the effect of enhancing an investor's influence over the target company. This often arises when investors seek and obtain covenants obligating the target company to act or not act in a particular way.[42] This can also occur independent of an equity investment agreement, such as restrictive covenants in a loan agreement that benefit a lending company that also controls a material amount of voting securities of the debtor company.

Contractual rights often raise controlling influence concerns when they provide an investor with the ability to direct or block the major operational or policy decisions of the target company. For example, the board of directors of a company generally decides whether to recommend that shareholders accept an offer to sell the company to a third party, and shareholders generally decide whether to accept such an offer by majority vote. If a contract between a company and an investor provides that the company may not accept a takeover offer without the consent of the investor, the contract effectively provides the single investor the ability to override a decision by the board of directors and the shareholders to accept a takeover offer. The ability to veto an important business decision of a company provides an investor with the ability to exercise a controlling influence over a major operational or policy decision of the company.

However, the Board has long recognized that contracts governing business relationships, including many loan agreements, contain restrictive covenants and that the existence of these covenants has not been sufficient, in itself, to constitute a controlling influence. The Board generally has allowed companies to enter into restrictive covenants with each other for purposes of loan transactions or commercial services without raising controlling influence concerns. However, when a company has a material voting ownership interest in another company and has covenants that restrict the target company, the covenants have raised controlling influence concerns. This has been true whether the covenants arise directly from the equity investment (*e.g.,* are contained in a stock purchase agreement or related documents) or arise from some creditor or other business relationship between the companies.

As noted previously, there is a presumption in the BHC Act that a company that controls less than 5 percent of any class of voting securities of a second company does not control the second company. A company with a 5 percent or greater voting interest in a second company has a material voting interest in the second company and, as a result, a core feature of the first company's relationship with the second company is an investor-investee relationship, even if the first company and the second company also have other material relationships.

The proposal would presume a company to control a second company if the first company owns 5 percent or more of any class of voting securities of the second company and if the first company has any contractual right that significantly restricts the discretion of

[42] Contractual covenants also may raise safety and soundness concerns, such as a covenant that impairs the ability of a banking organization to raise additional capital, or a covenant that imposes substantial financial obligations on a banking organization.

the second company over major operational or policy decisions. A company with less than 5 percent of each class of voting securities of a second company would not be presumed to control the second company even if the first company has covenants that significantly restrict the discretion of the second company over major operational and policy decisions. As a result, the presumptions would recognize the potentially significant influence that covenants can provide while also recognizing the use of standard restrictive covenants in loan agreements and other market-terms business relationships.

The presumption of control under the proposal would use a new defined term, ''limiting contractual right,'' which would be defined to mean a contractual right that significantly restricts, directly or indirectly, the discretion of a company over major operational or policy decisions. The proposal would include a nonexclusive list of examples of contractual rights that are considered to be limiting contractual rights, as well as a nonexclusive list of examples of contractual rights that are not considered to be limiting contractual rights. These examples should provide additional transparency and clarity regarding the scope of the presumption. These examples are described in greater detail in the definitions section later in this discussion.

Total Equity

The Board has long subscribed to the view that the overall size of an equity investment, including both voting and nonvoting equity, is an important indicator of the degree of influence an investor may have. Investors with large equity investments have a powerful incentive to wield influence over the company in which they have invested. Such investors have a substantial amount of money at stake in the target company, are among the first to absorb losses if the company has financial difficulties, and participate in the profits of the company. Moreover, a company is likely to pay heed to its large shareholders in order to maintain stability in its capital base, enhance its ability to raise additional equity capital in the future, and to prevent the negative market signal that may be created by the sale of a large block of equity by an unhappy shareholder. These concerns apply to both voting equity and nonvoting equity investments.

Accordingly, the Board traditionally has taken account of the presence and size of nonvoting equity investments in its controlling influence analysis. For example, in the 1982 Policy Statement, the Board set forth a guideline that nonvoting equity investments that exceed 25 percent of the total equity of a company generally raise control concerns under the BHC Act. In the 2008 Policy Statement, the Board reaffirmed the position that a nonvoting equity investment in excess of 25 percent generally raises control concerns under the BHC Act. However, the Board also noted that a company with voting and nonvoting securities that, when aggregated, represent less than one-third of the total equity of a second company generally would not have a controlling influence over the second company if the first company controlled less than 15 percent of any class of voting securities of the second company.

The Board has recognized that nonvoting equity does not provide the holder with the same ability to exercise a controlling influence as voting equity, because nonvoting equity generally does not participate in the selection of directors or decisions on certain other matters that require shareholder approval. Moreover, as noted previously, the BHC Act defines control in terms of ownership of 25 percent or more of a class of voting securities but does not impose an express limit on ownership of nonvoting securities.

The Board continues to believe that, in most circumstances, an investor that owns 25 percent or more of the total equity of a company owns enough of the capital resources of the company to have a controlling influence over the management or policies of the company. The Board continues to recognize, however, that the ability of an investor to exercise a controlling influence through nonvoting equity instruments depends significantly on the nature and extent of the investor's overall relationship with the company.

Accordingly, under the proposal and consistent with the 2008 Policy Statement, the Board would presume control if an investor had less than 15 percent of the voting shares of the second company but more than one-third of the total equity of the second company. The Board also would presume control if an investor had 15 percent or more of the voting shares of the second company and 25 percent or more of the second company's total equity.

Question 11: The proposal incorporates the Board's historical practice with respect to total equity, as discussed in the 2008 Policy Statement. Should the Board permit an investor to have a greater ownership of total equity without triggering a presumption of control?

Proxies on Issues

The Board historically has raised controlling influence concerns if a company with control over 10 percent or more of a class of voting securities of a second company solicits proxies from the shareholders of the second company on any issue. The Board is not proposing a presumption that a company that controls 10 percent or more of a class of voting securities of a second company, and solicits proxies from the shareholders of the second company on any issue, controls the second company. Thus, the proposal would provide a noncontrolling investor greater latitude to exercise its shareholder rights and engage with the target company and other shareholders on certain issues.

Question 12: Should the Board include a presumption that a company controls a second company if the first company controls 10 percent or more of any class of voting securities of the second company and solicits proxies on any issue presented to the shareholders of the second company for a vote?

Threats To Dispose

Historically, the Board has viewed threats to dispose of large blocks of voting or nonvoting securities in an effort to try to affect the policy and management decisions of the second company as presenting potential controlling influence concerns. As a result, the Board traditionally has raised controlling influence concerns if a company with control over 10 percent or more or a class of securities of a second company threatens to dispose of its investment if the second company refuses to take some action desired by the first company. However, the Board also recognizes that an investor who is unhappy or disagrees with the business decisions of the company in which it invests should be able to exit its investment, and the possibility of investor exit imposes important discipline on management. The Board is not proposing a presumption of control based on threats to dispose of securities.

Question 13: Should the Board include a presumption that a company is presumed to control a second company when the first company has a significant voting stake in the second company, such as 10 percent or more, and threatens the second company with disposing its shares in order to induce action or inaction by the second company?

D. Description of Additional Proposed Presumptions and Exclusions

In addition to the tiered presumption framework described previously, the proposal would include several additional presumptions of control. Several of these presumptions are currently in Regulation Y and would be retained in substantially the same form, with clarifications. The remaining new presumptions relate to standards that the Board has historically used to make control decisions, but has not before included in a regulation. These proposed presumptions are described in detail in this section.

Management Agreements

Management agreements have long raised controlling influence concerns for the Board. In 1971, when the Board promulgated its first presumptions of control, the Board included a presumption that a company would control another company if the first company had an agreement or understanding to exercise significant influence or discretion regarding the general management or core operations of the second company. The Board continues to believe that agreements under which a company can direct or exercise significant influence over the management or operations of another company raise significant controlling influence concerns.

The proposal would expand slightly the existing presumption to also include other types of agreements or understandings that allow a company to direct or exercise significant influence over the core business or policy decisions of the second company. The Board believes that the ability to direct the core business or policy decisions of a company also evidences the ability to exercise a controlling influence over the company. The Board does not intend for routine outsourcing agreements, such as IT services agreements, to qualify as management agreements. The proposed revised presumption also would clarify that a management agreement includes an agreement where a company is a managing member, trustee, or general partner of a second company, or exercises similar functions. The Board has long considered companies in these positions to have the power to exercise control over the second company.

Question 14: Should the Board expressly incorporate the concepts of routine management and operation under the Board's merchant banking rules into the management agreement presumption (see 12 CFR 225.170 et seq.)?

Question 15: What other common types of agreements constitute management agreements and should such agreements be listed in the Board's regulation?

Question 16: What other types of arrangements generally provide one company the ability to exercise a controlling influence over another company similar to serving as trustee of a trust or general partner of a partnership? Should the presumption include any such other arrangements?

Investment Advice

The proposal would include a presumption of control where a first company serves as investment adviser to a second company that is an investment fund and where the first company controls 5 percent or more of any class of voting securities of the second company or 25 percent or more of the total equity capital of the second company. For purposes of this presumption, the proposal would define ''investment adviser'' to include any person registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''), any person registered as a commodity trading advisor under the Commodity Exchange Act, or a foreign equivalent of such a registered adviser.[43] Similarly, ''investment fund'' would include a wide range of investment vehicles, including investment companies registered under the Investment Company Act of 1940, companies that are exempt from registration under the Investment Company Act, and foreign equivalents of either registered investment companies or exempt companies.[44] Other investment entities, such as commodity funds and real estate investment trusts, generally also would be included as investment funds.

However, the proposed presumption of control would not apply if the company organized and sponsored the investment fund within the preceding twelve months. This would allow the company to avoid triggering the presumption of control over the investment fund during the initial seeding period of the fund.

The proposed presumption of control for service as an investment advisor to an investment fund is intended to be consistent with the Board's precedents regarding when an investment advisor controls an advised investment fund under the BHC Act and the Glass-Steagall Act.[45]

Question 17: How could the Board further clarify the proposed investment advisor presumption, particularly with respect to the meaning of ''investment advisor'' and ''investment fund?'' Should the proposed presumption differentiate between different types of investment advisory roles or different types of investment funds?

Question 18: Should the proposed presumption use different voting security or total equity thresholds?

Question 19: Should the proposed presumption provide a longer seeding period? If the proposed presumption should adopt a longer seeding period, what would be an appropriate length of time for such a seeding period?

Question 20: Would the presumption have any adverse or unintended consequences on investment advisory activities?

Accounting Consolidation

Under the proposal, the Board would presume that a company that consolidates a second company under U.S. generally accepted accounting principles (''GAAP'') would be presumed to control the second company for purposes of the BHC Act. The Board believes that this presumption is appropriate because consolidation is generally called for under GAAP under circumstances where the consolidating entity has a controlling financial interest over the consolidated entity. For example, a company generally consolidates another company when the first company owns a majority of the voting securities of the second company. GAAP also permits consolidation in situations (i) where a company has the power to direct the activities of a second company that most significantly impact that company's economic performance and has the right to receive a considerable portion of the economic benefits of the second company or (ii) where a company controls a second company by contract.[46] The proposed presumption is not intended to suggest that the absence of consolidation under GAAP indicates that a company does not control another company.

Question 21: Should this presumption be expanded to presume that for purposes of the BHC Act, a company controls any other company that the first company consolidates for accounting purposes (regardless of whether the company uses GAAP)?

Question 22: Should the Board presume that a company controls a

[43] 15 U.S.C. 80b–1 *et seq.;* 7 U.S.C. 1 *et seq.*

[44] 15 U.S.C. 80a *et seq.*

[45] *See, e.g.,* Letter to H. Rodgin Cohen, Esq., dated June 24, 1999, *https://www.federalreserve.gov/boarddocs/legalint/BHC_ChangeInControl/1999/19990624/.*

[46] *See, e.g.,* ASC 810–10.

second company for purposes of the BHC Act when the first company accounts for the second company using the GAAP equity method of accounting (in addition to when the first company consolidates the second company for purposes of GAAP)?

Divestiture

The Board is proposing to substantially revise its existing standards regarding divestiture of control. The Board historically has taken the position that a company that has controlled another company for a significant period of time may be able to exert a controlling influence over that company even after a substantial divestiture.[47] As a result, the Board typically has applied a stricter standard for determining noncontrol in divestiture cases than cases where a company seeks to establish a new noncontrolling investment.[48] In determining whether a reduction in ownership would be effective to terminate an existing control relationship, the Board has placed significant weight on the percentage of voting securities retained by the divesting company and the ongoing relationships between the divesting company and the company being divested.

The Board has examined its practice in this area and believes that a revision of its past practice would be appropriate. The Board continues to believe that a company that has long controlled another company might be capable of controlling that company even after a substantial divestiture.[49] However, the Board believes that the passage of time diminishes the likelihood that a formerly controlling company would be able to leverage its past relationship to continue to exert a controlling influence over the management and policies of the formerly controlled company. In addition, while the Board believes that a history of control provides some influence, the Board also recognizes that a company that has reduced its voting ownership significantly below 25 percent has materially reduced its ability to exercise a controlling influence. Thus, the proposal would state that a company that previously controlled a second company during the preceding two years would be presumed to continue to control the second company if the first company owns 15 percent or more of any class of voting securities of the second company. The other presumptions of control, such as business relationships and interlocks, would continue to apply in evaluating whether a divesting company exercises a controlling influence over a partially divested company.

The practical effect of the proposed presumption would be that a company generally would not be presumed to control a former subsidiary (*e.g.,* a subsidiary that was previously wholly owned, but in which the company is selling some of its ownership stake) by divesting below 15 percent of any class of voting securities.[50] However, in order to avoid the presumption of control the first company also would be required to remain below 15 percent for two years. If the first company's ownership increased to 15 percent or more during the two year period, the first company would be presumed to control the second company.

In addition to the option of divesting below 15 percent, in practice the proposed divestiture presumption would allow a company to divest to between 15 percent and less than 25 percent and wait for two years to pass. After two years have passed since the company owned 25 percent or more, the proposed presumption of control would no longer apply even though the company's ownership remained at 15 percent or more. Thus, a divesting company could choose between (i) divesting to below 15 percent and (ii) divesting to between 15 percent and less than 25 percent for a period in excess of two years, to avoid the presumption of control applicable to divestitures.

In addition, the divestiture presumption would not apply if a majority of each class of voting securities of the company that is being sold is controlled by a single unaffiliated individual or company. For example, if a company sells 80 percent of the voting common stock of its subsidiary bank to another company and retains 20 percent of the common stock, the first company would not trigger the divestiture presumption of control with respect to the bank being sold, despite its previous control of the bank, because a single, unaffiliated company would own a majority of the shares of the bank.

Under the proposal, the divestiture presumption also generally would not apply in cases where a company sells a subsidiary to a third company and receives stock of the third company as some or all of the consideration for the sale.[51] For example, if a company sells 100 percent of the voting common stock of its subsidiary bank to another company for consideration that includes 20 percent of the voting common stock of the acquiring company, the divestiture presumption would not apply (so long as the selling company does not control the acquiring company).

Question 23: Should the Board use different percentages for voting securities or total equity for purposes of the proposed presumptions for divestitures? What voting and total equity percentages would be more appropriate? Should the Board use a time period other than two years and, if so, what time period should be used?

Question 24: Is a special divestiture presumption necessary or appropriate?

Presumption of Control for the Combined Ownership of a Company and Its Senior Management Officials and Directors (5–25 Presumption)

The proposal would include a presumption that a company controls a second company when the first company controls at least 5 percent of a class of voting securities of the second company and the senior management officials and directors of the first company, together with their immediate

[47] *See, e.g.,* ''Statement of policy concerning divestitures by bank holding companies'' (divestiture policy statement). 12 CFR 225.138. In the divestiture policy statement, the Board describes general procedures and considerations for purposes of concluding that a company has successfully divested a particular asset. The divestiture policy statement includes divestitures of control over another company, but also applies more broadly to divestitures of impermissible assets. The divestiture policy statement indicates that divestiture is a special consideration for purposes of control and that the Board's normal rules and presumptions regarding control may not always be appropriate in the context of divestiture.

[48] *See, e.g.,* 12 CFR 225.139 (''2(g)(3) policy statement''). The 2(g)(3) policy statement describes the implementation of section 2(g)(3) of the BHC Act. Section 2(g)(3) created a rebuttable presumption that a transferor continued to control shares of a company transferred to a transferee if the transferee was indebted to the transferor or if there were certain director or officer interlocks between the transferor and transferee. The presumption could be rebutted if the Board determined that there was no ability to control. Although Congress removed section 2(g)(3) from the BHC Act in 1996, the 2(g)(3) policy statement remains relevant because it illustrates the special considerations raised by the context of divestiture and the longstanding position of the Board that terminating control requires reducing relationships to lower levels than would be consistent with a new noncontrolling relationship.

[49] *See Am. Gas & Elec. Co.* v. *SEC,* 134 F.2d 633, 643 (D.C. Cir. 1943) (holding that ''controls and influences exercised for so long and so extensively [under the Public Utilities Holding Company Act] are not severed instantaneously, sharply and completely, especially when powers of voting, consultation and influence such as have been retained remain'').

[50] This discussion assumes that the divesting company does not trigger any other presumption of control.

[51] *See, e.g.,* Letter to Mark Menting, Esq., dated February 14, 2012, *https://www.federalreserve.gov/bankinforeg/LegalInterpretations/bhc_changeincontrol20120214.pdf.*

family members and the first company, own 25 percent or more of a class of voting securities of the second company. This presumption corresponds to a longstanding presumption of control over a company in Regulation Y.[52] However, under the proposal, the presumption would be revised not to apply if the first company controls less than 15 percent of each class of voting securities of the second company and the senior management officials and directors of the first company, together with their immediate family members, control 50 percent or more of each class of voting securities of the second company.

The proposed presumption reflects the Board's position that it is generally appropriate to attribute shares held by management officials of a company to the company for purposes of measuring control by the company under the BHC Act.[53] The management officials of a company are well positioned to coordinate their actions with each other and the company to act as a single voting bloc to advance the interests of the company.

The proposed new exclusion to the presumption reflects the Board's understanding that, when individuals control an outright majority of a class of voting securities of a second company, it is the individuals who are truly exercising control over the second company, rather than any company that employs the individuals. Under these circumstances, the first company is generally not a significant conduit for control over the second company. This exclusion has a basis in the Vickars-Henry precedent.[54]

Question 25: Should the Board revise the proposed 5–25 presumption so that it applies only when the first company controls 10 percent or more of the voting securities of the second company (rather than 5 percent or more)?

Investment Company Exception

Under the proposal, there would be a limited exception from all of the presumptions that one company controls another company if the second company is an investment company registered with the Securities and Exchange Commission (''SEC'') under the Investment Company Act of 1940 and certain other criteria are satisfied.[55] In order to qualify for this exception, the relationship between the companies would have to be limited such that:

- The only business relationships between the first company and the investment company are investment advisory, custodian, transfer agent, registrar, administrative, distributor, and securities brokerage services provided by the first company to the investment company;
- Representatives of the first company occupy 25 percent or less of the board of directors or trustees of the investment company; and
- The first company controls less than 5 percent of each class of voting securities of the investment company and less than 25 percent of the total equity of the investment company.

In addition, the last criterion would be waived if the first company organized and sponsored the second company within the preceding twelve months. This would allow the first company to control greater percentages of securities of the second company during the initial seeding period of the investment company.

This proposed limited exception for SEC-registered investment companies is intended to preserve the Board's precedents related to control over registered investment companies, not to create a looser standard for relationships with such companies.[56] Consistent with this intention and unlike the investment adviser presumption, the exception for registered investment companies would be limited to companies that are registered with the SEC as investment companies under the Investment Company Act. A first company that does not satisfy the criteria in the registered investment company exception would not necessarily be presumed to control the second company. Instead, the first company may or may not be presumed to control the second company depending on the applicability of the other proposed presumptions of control.

Question 26: Is it necessary or appropriate to have an exception to the control presumptions for registered investment companies? Should the proposed presumption provide a different standard than the Board's investment company precedents contain, such as a longer seeding period, different business relationships, or different levels of ownership?

Question 27: Should the proposed registered investment company exception be expanded to apply to other types of investment funds?

Closely Held Companies and Widely Held Companies

In developing this proposal, the Board considered whether the proposed presumptions should vary depending on differences in the ownership structure of the second company. In particular, the Board considered whether there should be different presumptions or different presumption thresholds for (i) companies that are widely held relative to companies that are closely held or (ii) companies that are majority owned by a third party.[57] In many cases, it could be reasonable to assume that a major investor in a company that is otherwise widely held by dispersed shareholders would have outsized influence compared to a situation where the major investor is one of several major investors in a closely held company. Similarly, in many cases, it could be reasonable to assume that a major investor has limited influence when there is another investor with outright majority ownership.

The proposal, however, does not include different presumptions for widely held companies versus closely held companies. Incorporating these distinctions in the presumptions could greatly increase the complexity of the proposal, and could make the presumptions more difficult to apply in practice. The Board believes that the proposed presumptions would provide appropriate standards for controlling influence in most cases. However, as noted previously, the Board would retain its ability to determine that a company does or does not control a second company based on the facts and circumstances presented, and the Board recognizes that the composition of the other shareholders of the second company could be an important consideration in making such a determination.

Question 28: Should the Board create different presumptions for widely held companies and closely held companies? Should the Board create different presumptions for companies that are majority owned by a third party? If so, which of the proposed presumptions should include this differentiation, and how should the presumptions be changed?

Question 29: If the Board were to differentiate between widely held and closely held companies, what should the standards be for a company to be widely held and closely held? Would having publically traded securities or registered

[52] 12 CFR 225.31(d)(2)(ii).

[53] This principle is also reflected in the proposal in the rules for calculating the percentage of a class of voting securities controlled by a company.

[54] *Vickars-Henry Corp.* v. *Fed. Reserve Sys.,* 629 F.2d 629 (9th Cir. 1980).

[55] 15 U.S.C. 80a *et seq.*

[56] *See, e.g., Mellon Bank Corporation,* 79 Federal Reserve Bulletin 626 (1993); *The Chase Manhattan Corporation,* 81 Federal Reserve Bulletin 883 (1995); *Commerzbank AG,* 83 Federal Reserve Bulletin 678 (1997).

[57] As discussed above, the proposal recognizes this concept in a relatively limited way in the exception to the 5–25 presumptions.

securities be an effective means to identify widely held companies?

Fiduciary Exception

The presumptions described above would not apply to the extent that a company controls voting or nonvoting securities of a second company in a fiduciary capacity without sole discretionary authority to exercise the voting rights. This exception for holding securities in a fiduciary capacity is currently in the control provisions of Regulation Y and would be retained in full.[58] The exception implements the treatment of such holdings provided by the BHC Act.[59]

Rebuttable Presumption of Noncontrol

Under the proposal, a company would be presumed not to control a second company if the first company controls less than 10 percent of every class of voting securities of the second company and if the first company is not presumed to control the second company under any of the proposed presumptions of control.[60] This would modestly expand the existing statutory and regulatory presumption of noncontrol where the first company controls less than 5 percent of any class of voting securities of the second company.[61]

Question 30: Should the proposed presumption of noncontrol use a different threshold than 10 percent of the voting securities of the second company?

Question 31: Should the Board presume noncontrol in all cases where neither a statutory standard nor a regulatory presumption of control applies?

Question 32: Should the Board create an exception from any of the presumptions of control when there is a larger shareholder that controls 50 percent or more of each class of voting securities of the second company?

Question 33: Should the Board revise any of the other proposed presumptions to allow a company to control a greater percentage of voting securities and/or have more substantial other relationships with a second company when there is a dominant shareholder or dominant shareholder group that is unaffiliated with the first company? Including this type of exception would make the proposed presumptions more complicated, but also more sensitive to particular facts. Which presumptions should the Board consider revising to include this treatment or does the Board's proposal balance complexity and sensitivity appropriately?

III. Proposed Definitions Related to the Proposed Presumptions

In connection with the proposed presumptions described previously, the proposal would amend Regulation Y and Regulation LL to update and clarify definitions of terms used in the proposed presumptions. This section discusses in detail each of these proposed revisions.

A. First Company and Second Company

As discussed above, the core of the proposal is the addition of a series of presumptions of control that would apply in the context of the Board making a determination that a first company has the ability to exercise a controlling influence over a second company. To clarify the application of these presumptions, the proposal includes definitions of ''first company'' and ''second company.''

''First company'' would be defined as the company whose control over the second company is the subject of a determination of control by the Board. ''Second company'' would be defined as the company the control of which by the first company is the subject of a determination of control by the Board.[62]

For many of the proposed presumptions, the first company would be presumed to control the second company if the first company, together with its subsidiaries, has particular relationships with the second company, together with its subsidiaries. Although the relationship between the first company and its subsidiaries, on the one hand, and the second company and its subsidiaries, on the other hand, is usually the appropriate scope of the controlling influence inquiry, the result of the inquiry is necessarily specific to whether the first company itself controls the second company itself. As a result, the defined terms ''first company'' and ''second company'' do not include subsidiaries of the first company or second company.

In addition, the proposal provides that, for purposes of the proposed presumptions, any company that is both a subsidiary of the first company and the second company should be treated as a subsidiary of the first company but not as a subsidiary of the second company. This would prevent the second company's relationships with a joint venture subsidiary with the first company from being considered relationships with the first company for purposes of the presumptions of control. The Board believes this treatment is appropriate to allow companies to have joint ventures that are controlled by each company without the control over the joint venture necessarily causing the joint venture partners to be presumed to control each other.

Question 34: Should the Board revise the definition of ''first company'' or ''second company'' to incorporate subsidiaries or affiliates of the first company or second company?

B. Voting Securities and Nonvoting Securities

The BHC Act defines control to include a company owning, controlling, or having power to vote 25 percent or more of any class of voting securities of another company.[63] In addition, several of the proposed presumptions require identifying the percentage of a class of voting securities controlled by a company in another company.

Currently, Regulation Y includes a definition of ''voting securities'' and a definition of ''nonvoting shares.''[64] The proposal would change the defined term ''nonvoting shares'' to ''nonvoting securities'' and would include in the definition of ''nonvoting securities'' equity instruments issued by companies other than stock corporations, such as limited liability companies and partnerships. This would be consistent with the Board's historical practice.

In addition, the proposal would revise the existing definition of ''nonvoting shares'' to clarify the regulation in a manner consistent with the Board's interpretations. In the current definition of ''nonvoting shares,'' equity instruments are nonvoting if any voting rights associated with the instruments are limited solely to the type customarily provided by statute with regard to matters that would significantly and adversely affect the rights or preferences of the instruments.[65] The proposal would be revise the definition to make it clear that common stock can be nonvoting securities.[66]

[58] *See* 12 CFR 225.31(d)(2)(iv).

[59] *See* 12 U.S.C. 1841(a)(5)(A).

[60] The filing requirements applicable to bank holding companies and savings and loan holding companies for investment of 5 percent or more of the voting securities of a company would not be altered as a result of the presumption of noncontrol.

[61] 12 U.S.C. 1841(a)(3); 12 CFR 225.31(e) and 238.21(e).

[62] First company and second company must meet the definition of ''company'' under the BHC Act or HOLA, as applicable, but could take a variety of legal entity forms, including a stock corporation, limited liability corporation, partnership, business trust, or foreign equivalents of such legal entities. *See* 12 U.S.C. 1467a(a)(1)(C) and 1841(b).

[63] 12 U.S.C. 1841(a)(2)(A).

[64] 12 CFR 225.2(q).

[65] 12 CFR 225.2(q)(2)(i).

[66] For safety and soundness reasons, the Board generally believes that voting common stockholders' equity should be the dominant form

Continued

Regulation Y also provides a nonexclusive list of examples of the types of voting rights that the Board has considered to be within the scope of the defensive voting rights that nonvoting shares may contain. The proposal would revise the definition of ''nonvoting shares'' to expressly permit defensive voting rights that are commonly found in investment funds that are organized as limited liability companies and limited partnerships. Specifically, the proposal would state that the defensive voting rights of a nonvoting share include the right to vote to remove a general partner or managing member for cause, the right to vote to replace a general partner or managing member that has been removed for cause or has become incapacitated, and the right to vote to dissolve the company or to continue operations following the removal of the general partner or managing member.

Question 35: What other revisions to the definition of nonvoting securities would be appropriate, such as additional clarifications to permitted defensive rights?

Question 36: Would it be clearer if Regulation Y referred simply to ''company'' where it currently refers to ''bank or other company''?

C. Calculation of Voting Percentage

As noted above, the BHC Act defines control in part based on a company owning, controlling, or having power to vote 25 percent or more of a class of voting securities of another company.[67] In addition, many of the proposed presumptions of control would require determining the percentage of a class of a company's voting securities owned, controlled, or held with power to vote by another company. The proposed rule would reflect the Board's current practice for determining whether a company's voting securities are owned, controlled, or held with power to vote by an investor and would provide rules for determining the percentage of a class of a company's voting securities attributed to an investor.

Ownership, Control, and Holding With Power to Vote

The proposal would provide standards for determining whether a person ''controls'' a security.[68] A person would control a security if the person owns the security or has the power to sell, transfer, pledge, or otherwise dispose of the security. In addition, a person would control a security if the person has the power to vote the security, other than due to holding a short-term, revocable proxy. This proposed definition of control over securities would be consistent with Board precedent and with the language of the BHC Act.[69]

Options, Warrants, and Convertible Instruments

The proposal would provide standards for deeming a person to control a security through control of an option or warrant to acquire the security or through control of a convertible instrument that may be converted into or exchanged for the security. Under the proposal's ''look-through'' approach, a person would control all securities that the person could control upon exercise of any options or warrants. In addition, a person would control all securities that the person could control as a result of the conversion or exchange of a convertible instrument controlled by the person. This approach would be consistent with the Board's longstanding precedent of considering a person to control any securities (i) that the person has a contractual right to acquire now or in the future; and (ii) that the person would automatically acquire upon occurrence of a future event.[70] The look-through approach would apply even if there were an unsatisfied condition precedent to the exercise of the options or if the options were significantly out of the money.

In addition, the proposal would provide that a person would control the maximum number of securities that could be obtained under the terms of the option, warrant, or convertible instrument. Accordingly, if the number of shares that could be acquired upon exercise of an option varies based on some metric, such as the market price or book value of the shares, the person would be considered to control the highest possible percentage of the class of securities that could ever be acquired under the terms of the option.

Moreover, for purposes of calculating a person's percentage of a class of voting securities or total equity, the person generally would be deemed to control the percentage resulting from the exercise of the person's options, assuming that no other parties elected to exercise their options. However, if, for example, a person may exercise an option only when all outstanding options in a class are simultaneously exercised, the percentage controlled by the person would reflect the exercise of all the outstanding options in the class, not just those options held by the person.

The proposal would provide several limited exceptions to the general look-through approach. Consistent with the 2008 Policy Statement, the proposal would incorporate a limited exception for financial instruments that may convert into voting securities but, by their terms or as required by law, may not become voting securities in the hands of the current holder or any affiliate of the current holder and may only convert to voting securities upon transfer to (i) the issuer or an affiliate of the transferor, (ii) in a widespread public distribution, (iii) in transfers where no transferee or group of associated transferees would receive 2 percent or more of any class of voting securities of the issuer, or (iv) to a transferee that controls 50 percent or more of every class of voting securities before the transfer.

The proposal also would exempt from the general look-through approach a purchase agreement to acquire securities that has not yet closed. This would allow parties to enter into securities purchase agreements pending regulatory approval, due diligence, and satisfaction of other conditions to closing. In order to be eligible for this exemption, the securities purchase agreement should only be in effect for the time necessary to satisfy the closing condition. Thus, for example, a company would be able to enter into a securities purchase agreement to acquire shares in bank without being considered to control the shares until the closing, when the company actually took ownership of the shares. This would allow the company to file any necessary notice or application with an appropriate federal banking authority, conduct due diligence, and prepare funds for the purchase. However, the company would be expected to file any required notice or application promptly and to work actively to satisfy any other closing conditions.[71]

In addition, the proposal would exempt from the general look-through approach any options, warrants, or convertible instruments that would permit an investor to acquire additional voting securities only to maintain the investor's percentage of voting securities in the event the company increases the

of equity. *See e.g.,* 78 FR 62018, 62044 (Oct. 11, 2013).

[67] 12 U.S.C. 1841(a)(2)(A).

[68] These proposed standards would effectively replace the presumptions for control over voting securities currently in 12 CFR 225.31(d)(1). In this discussion, ''person'' has the meaning provided in 12 CFR 225.2(l) and 12 CFR 238.2(j).

[69] *See, e.g.,* 12 U.S.C. 1841(a)(2)–(3) and 1842(a).

[70] *See, e.g.,* 2008 Policy Statement.

[71] Even if a notice or application is filed promptly, if the filing remains pending for an unusually long period of time, control concerns and supervisory concerns may arise. In general, periods of less than a year would not raise such concerns.

number of its outstanding voting securities.

Question 37: How could the Board more clearly define the scope of the look-through approach to options, warrants, and convertible instruments? Should the Board consider adding or removing any of the proposed exceptions or limitations to the look-through approach? If so, which exceptions or limitations should be added and which should be removed and why?

Question 38: How could the Board more clearly describe the principle that options, warrants, and convertible instruments would be looked through to the maximum percentage of voting securities that the person could control upon exercise or conversion? Should the Board limit this principle in any way?

Question 39: What additional clarification should be included to define a securities purchase agreement? Should the Board define securities purchase agreement by reference to standard characteristics, such as a limited term intended to allow for the preparation of funds for transfer and completion of due diligence, inability to transfer or assign to a third party, and an expectation among the parties that the sale will in fact occur as agreed?

Control Over Securities

Consistent with current Regulation Y, the proposal would provide that a person controls securities if the person is a party to an agreement or understanding under which the rights of the owner or holder of securities are restricted in any manner, unless the restriction falls under the exceptions specified under the rule. Thus, for example, a person holding a long-term irrevocable proxy to vote shares owned by another party would control the securities subject to the proxy. Under the proposal and consistent with current practice, multiple persons could control the same securities by different means. For example, one person could own securities that another person has the power to vote. In such circumstances, the Board would treat each person as controlling the securities in question.

The proposal would provide six exceptions to this general rule. The first exception is for rights of first refusal, rights of last refusal, tag-along rights, drag-along rights, or similar rights that are on market terms and that do not impose significant restrictions, including significant delay, on the transfer of the securities. For this purpose, a right of first refusal is an arrangement whereby a person seeking to sell or otherwise transfer a security must first offer the security to one or more other persons before making a transfer. Similarly, a right of last refusal is an arrangement whereby a person that has tentatively agreed to sell or otherwise transfer a security must then offer one or more other persons the opportunity to acquire the security on the agreed terms. A tag-along right is an arrangement whereby a person is permitted to participate in a sale or other transfer of securities that has been negotiated by another shareholder on the same terms obtained by the other shareholder. A drag-along right is an arrangement whereby a person can be obligated to join in a sale or other transfer of securities on the same terms agreed by one or more other shareholders. The Board recognizes that these types of relationships are commonly used to govern transfers of securities of companies, particularly companies with securities that are not publicly traded. The Board does not intend for standard, market-terms arrangements of this type to result in the parties to such agreements controlling the securities subject to the arrangement.

The Board believes, however, that some rights of first refusal, rights of last refusal, tag-along rights, drag-along rights, and similar arrangements serve to impose significant, non-market-standard constraints on the transfer of securities. Under the proposal, these arrangements would convey control of the underlying securities. For example, a right of last refusal that allows an investor to acquire shares at market price within 30 days' notice from a selling shareholder generally would not provide the investor with control over the seller's shares. However, a right of last refusal that allows an investor to acquire shares at a steep discount from market price, or allows the investor an unnecessarily long period of time to decide whether or not to acquire the shares, provides the investor with control over the seller's shares because the restrictions are significant, beyond standard market terms, and unnecessary to provide the investor a reasonable opportunity to buy the shares.

Second, the proposal would provide an exception for arrangements that restrict the rights of an owner or holder of securities when the restrictions are incidental to a bona fide loan transaction. Thus, if a creditor obtains a lien on the shares of a subsidiary of a debtor in connection with a bona fide loan transaction that prevents the debtor from selling the shares to a third party or pledging the shares as collateral to another creditor, the creditor would not be considered to control the shares of the subsidiary of the debtor.

Third, the proposal would provide that an arrangement that restricts the ability of a shareholder to transfer shares pending the consummation of an acquisition does not provide the restricting party control over the shares of the restricted party. For example, if a person agrees to acquire shares of a banking organization from the current owner and the person is required to receive the approval of the Board before acquiring the shares, the parties could agree that the current owner would not sell the shares to a third party, pending Board approval and subsequent prompt consummation of the sale. In this fact pattern, the Board would not deem the person to control the shares because of the agreement.

Fourth, the proposal generally would provide that an arrangement that requires a current shareholder of a company to vote in favor of a proposed acquisition of the company would not result in the proposed acquirer controlling the shares of the current shareholder. In order to qualify for this exception, the restriction may only continue for the time necessary to obtain governmental and shareholder approval and to consummate the transaction promptly.

Fifth, the proposal would exempt arrangements among the shareholders of a company designed to preserve the tax status or tax benefits of a company, such as qualifying as a Subchapter S Corporation [72] or to preserve tax assets (such as net operating losses) against impairment.[73] However, in order to qualify for this exemption, the arrangement must not impose restrictions on securities beyond what is reasonably necessary to achieve the goal of preserving tax status, tax benefits, or tax assets.[74]

Sixth, the proposal would provide that a short-term revocable proxy would not provide the holder of the proxy with control over the securities governed by the proxy.[75] This would not interfere with the common practice of voting by proxy on matters presented for a shareholder vote, so long as the proxy is short in duration (*i.e.,* is only valid for the next shareholder vote) and may be rescinded by the shareholder after being granted.

[72] *See* 26 U.S.C. 1361.

[73] *See* 26 U.S.C. 382.

[74] Independent of whether controlling influence concerns are raised, agreements of this type may raise significant safety and soundness concerns under certain circumstances.

[75] The proposed treatment of short-term revocable proxies would be consistent with the Board's current regulations regarding notices under the Change in Bank Control Act. *See* 12 CFR 225.41(d)(4); 12 CFR 225.42(a)(5).

The proposal also would provide that a company that owns, controls, or holds with power to vote 5 percent or more of any class of voting securities of a second company controls any securities issued by the second company that are owned, controlled, or held with power to vote by the senior management officials, directors, or controlling shareholders of the first company, or by the immediate family members of such individuals. The Board has long recognized that a company and the individuals who own or operate the company may be expected to coordinate their actions with respect to common investments in a second company.[76] This portion of the proposal would provide a clear rule to apply to such circumstances in all cases.

Question 40: The proposal would add a new section to Regulation Y and Regulation LL that would define control over securities for all purposes in Regulation Y or Regulation LL (including, for example, in the context of notices pursuant to the Change in Bank Control Act of 1978), as applicable. Should the proposed new section apply for all purposes under the regulations or should it only apply for purposes of determining control due to controlling influence?

Question 41: Are there any additional common arrangements that limit the ability of shareholders to control their shares that the Board should exclude from the general rule that limitations on securities provide control over the securities?

Question 42: Should the Board remove or limit any of the proposed exclusions? If so, which ones and why?

Question 43: Should the senior management/director/controlling shareholder share attribution rule only attribute shares if (i) the first company financed the acquisition by the individuals, (ii) there is an agreement between the first company and the individuals regarding the vote or transfer of the securities, or (iii) the first company agreed to indemnify the individuals against losses on the securities?

Reservation of Authority

The proposal would include a reservation of authority to allow the Board to determine that securities that would otherwise be considered controlled by a person under the proposal are not controlled by the person. Similarly, the proposed reservation of authority would allow the Board to determine that securities that are not considered controlled by a person under the proposal are controlled by the person.

Percentage of a Class of Voting Securities

The proposal would provide a rule for calculating the percentage of a class of voting securities controlled by a person that takes into account both the number of shares and the voting power of those shares. Specifically, the percentage of a class of voting securities controlled by a person would be the greater of (i) the number of voting securities of the class controlled by the person divided by the number of issued and outstanding shares of the class of voting securities (expressed as a percentage) and (ii) the number of votes that the person could cast divided by the total number of votes that may be cast under the terms of all the voting securities of the class that are issued and outstanding (expressed as a percentage). This would be consistent with a longstanding Board practice of recognizing both the proportion of shares of a class controlled by an investor and the proportion of voting power within the class controlled by the investor. This approach is appropriate because the Board has defined a class of voting securities for purposes of the BHC Act to include all shares that vote on the same matters, even if some shares have outsized voting power compared to other shares in the same class.[77]

In addition, the proposal would provide that a person controls all voting securities controlled by the person and any subsidiaries of the person, and that a person generally does not control any voting securities controlled by any non-subsidiary. Regulation Y currently provides that a company controls securities that are controlled by subsidiaries of the company.[78] The proposal would clarify the existing provision in Regulation Y by providing that all voting securities held by controlled, but less than wholly owned, companies would be controlled by the controlling person. Similarly, if a person has a less than controlling interest in a company, the person generally would not control any voting securities controlled by the noncontrolled company.

Question 44: Should the Board attribute voting securities held by a subsidiary to a person based on the person's percentage of voting securities in the subsidiary rather than attributing all voting securities held by a subsidiary to the person?

Question 45: Should a company with a noncontrolling investment in another company be attributed its pro rata ownership of shares of a second company owned by the noncontrolled company, for purposes of calculating the first company's voting percentage in the second company?

D. Calculation of Total Equity Percentage

The proposal would provide a standard for calculating a company's total equity percentage in a second company that is a stock corporation that prepares financial statements according to GAAP. Under GAAP, the balance sheet of a corporation reflects a dollar amount of equity for each class of stock that a corporation has issued. For example, a class of preferred stock with a liquidation preference of $1000 per share is generally attributed $1000 per share on the equity portion of the balance sheet of the issuing corporation.

The first step to calculate a company's total equity in a second company would be to determine the percentage of each class of voting and nonvoting common or preferred stock issued by the second company that the first company controls.[79] Second, the percentage of each class of such stock controlled would be multiplied by the value of shareholders' equity allocated to the class of stock under GAAP. For this purpose, the value of shareholders' equity allocated to common stock would be all shareholders' equity not allocated to preferred stock. Most significantly, this would mean that retained earnings would be allocated to common stock. Third, the first company's dollars of shareholders' equity determined under the second step would be divided by the total shareholders' equity of the second company, as determined under GAAP, to arrive at the total equity percentage of the first company in the second company.

For example, assume that a first company owned 10 shares out of 100 of the common equity of second company, and 5 shares out of 100 of the preferred shares of the second company. In calculating total equity, first company

[76] *See, e.g.,* 12 CFR 225.31(d)(2)(ii).

[77] 12 CFR 225.2(q)(3).

[78] 12 CFR 225.2(e)(2)(i).

[79] For this purpose, all classes of common stock—whether voting or nonvoting—would be treated as a single class. If certain classes of common stock have different economic interests per share in the issuing company, the number of shares of common stock would be adjusted to equalize the economic interest per share. For example, if a company has Class A common stock and Class B common stock outstanding, and each share of Class B common stock has twice the economic interest in the company as each share of Class A common stock, each share of Class B common stock would be treated as two shares of common stock when aggregated with the Class A common stock.

would determine the percentage of shares owned in each class of securities of the second company (10 percent and 5 percent, respectively, in the example above). Second, the first company would multiply its percentage by the GAAP shareholders' equity attributed to each class. For example, assume the common shares were worth $10,000,000; the first company would be attributed $1,000,000 of equity based on its ownership of common shares. Further assume that the preferred shares as a class had a liquidation preference of $1,000,000; the first company would be attributed $50,000 of equity based on its ownership of preferred shares. Following through on this example, the first company's total equity in the second company would equal:

$$\frac{\$1{,}000{,}000\ (common\ equity)+\$50{,}000\ (preferred\ equity)}{\$10{,}000{,}000\ (total\ common\ equity)+\$1{,}000{,}000\ (total\ preferred\ equity)} = 9.5\ percent\ total\ equity$$

The proposal would provide for adjustments to this general standard for more complex structures. For example, a first company would be considered to control all equity securities controlled by its subsidiaries and, as a result, equity securities issued by the second company that are controlled by subsidiaries of the first company would be included in the calculation of total equity of the second company owned by the first company. The proposal also would provide that, to the extent that the first company controls equity instruments issued by a parent company that controls the second company, the calculation of total equity of the second company owned by the first company would include both the direct total equity of the second company controlled by the first company, and the indirect total equity of the second company controlled by the first company through the parent company of the second company, weighted by the total equity percentage of the second company's parent company in the second company. For example, assume that (i) the first company has direct control over 10 percent of the total equity of the second company, (ii) the first company has 10 percent of the total equity of a third company that controls the second company, and (iii) the third company has 50 percent of the total equity of the second company. Under these circumstances, the total equity of the first company in the second company would be 15 percent—the 10 percent direct total equity interest plus a 5 percent indirect total equity interest (*i.e.,* 10 percent of the 50 percent total equity interest that the third company has in the second company).

Under the proposal, the general standard would apply only to stock corporations that prepare financials under GAAP. However, these standards would be applied in other circumstances to the maximum extent possible consistent with the principles underlying the general standard. The Board recognizes that the standard may not function well for companies that are not stock corporations or that do not prepare GAAP financial statements, and therefore this standard cannot be applied to all companies by default.

In addition to the general standard, the proposal would provide for certain adjustments to prevent evasion that the Board has encountered in prior cases. If a company controls debt of a second company that is functionally equivalent to equity, that debt would count as equity and would be measured based on principal amount. Such debt would be included in the first company's total equity ownership of the second company to the extent the debt is controlled by the first company and the total amount of such debt outstanding would be included in the total shareholders' equity of the second company.

The proposal would include a list of features of debt that could cause the debt to be considered functionally equivalent to equity. These features would include that the debt is treated as equity under accounting, regulatory, or tax standards, or that the debt is very long dated or subordinated. In addition, debt issued by a company that has minimal equity to support the debt and debt that is not issued on market terms may be deemed functionally equivalent to equity. None of the listed features is intended to automatically result in debt being treated as functionally equivalent to equity. Instead, each instrument would have to be considered based on the facts and circumstances presented. The Board expects that it would be unusual for debt to be considered functionally equivalent to equity.

Similarly, the proposal would provide that other interests in a company may be treated as equity if they are functionally equivalent to equity. This is intended to capture arrangements other than debt or equity, such as contractual profit sharing rights, that provide the beneficiary with an economic interest that is equivalent to an equity interest but that often is classified as neither equity nor debt. As with debt that is functionally equivalent to equity, the Board expects that considering these other arrangements to be functionally equivalent to equity would be unusual.

In addition to describing how to calculate total equity, the proposal would provide a standard for when to calculate total equity for purposes of applying the presumptions of control. Under the proposal, an investing company must calculate its total equity in a second company each the time the investing company acquires control over additional interests of the second company or ceases to control interests of the second company.

Question 46: How could the Board further clarify the proposed general standard for calculating total equity percentages? Should any portion of the proposed general standard be revised and, if so, how and why?

Question 47: How could the Board further clarify or refine the proposed standards for considering debt or other interests to be functionally equivalent to total equity for purposes of determining an investor's total equity percentage? Should debt that is functionally equivalent to equity only be considered to the extent that it increases a company's total equity percentage?

Question 48: Should a first company be required to calculate its total equity percentage in a second company on a continuous basis or more frequently than under the proposal, or instead should a first company only be required to calculate its total equity at the time of its investment in a second company? For example, should a first company be required to calculate its total equity percentage in a second company upon any transaction by the second company that increases or decreases the shareholders equity of the second company by at least 5 percent, 10 percent, 25 percent, etc.? What are the benefits and consequences of more or less frequent recalculation of total equity percentages?

Question 49: Is the methodology for calculating total equity sufficiently clear? What additional guidance would improve the operation of the proposed methodology? For example, should the proposed methodology to calculate total equity be expanded to account for the treatment of options or warrants to

acquire voting or nonvoting shares, and if so, how?

Question 50: Should the proposed methodology be modified in the circumstance where a company has negative retained earnings, and if so, how? Should the proposed methodology require the attribution of accumulated other comprehensive income to the equity of the company for purposes of calculating a company's total equity investment in another company?

E. Contractual Provisions

Under one of the proposed presumptions of control, a company would be presumed to control a second company if the first company has a contractual right that significantly restricts, or allows the first company to significantly restrict, the discretion of the second company over major operational or policy decisions. The proposal would provide examples of contractual provisions that generally would significantly limit a company's discretion over major operational or policy decisions, as well as examples of contractual provisions that generally would not significantly limit discretion over such decisions. The examples are based on the Board's experience reviewing control fact patterns. The proposal would reflect the principle that a noncontrolling equity investor may benefit from certain defensive rights and may participate in most standard types of shareholders agreements, but a noncontrolling equity investor with a more than minimal percentage of voting securities may not have a contractual right to prevent a company from making major business decisions in the ordinary course.

As discussed previously, the presumption of control due to limiting contractual rights does not apply to investors with less than 5 percent of any class of voting securities. In part, this recognizes that creditors often impose significant limitations on borrowers and that the Board generally has not considered standard debtor-creditor relationships to provide the creditor with control over a debtor. However, when a creditor is also a significant equity investor in a debtor, the Board historically has been much more concerned with an investor leveraging its dual relationship as investor and creditor to exercise control over the debtor. The proposal would apply more broadly than debtor-creditor contracts to cover all contractual arrangements between an equity investor and an investee.[80]

The examples included in the proposal are not intended to provide a complete list of provisions that would or would not raise controlling influence concerns, but rather to offer non-exclusive examples to provide greater transparency into the types of contractual provisions that the Board generally would or would not consider to rise to the level of significantly restricting major operational or policy decisions.

Listed below are the examples included in the proposal for contractual provisions that would provide an investor company the ability to restrict significantly the discretion of a second company:

- Restrictions on activities in which a company may engage, including a prohibition on (i) entering into new lines of business, (ii) making substantial changes to or discontinuing existing lines of business, (iii) entering into a contractual arrangement with a third party that imposes significant financial obligations on the second company, or (iv) materially altering the policies or procedures of the company;
- Requirements that a company direct the proceeds of the investment to effect any action, including to redeem the company's outstanding voting shares;
- Restrictions on hiring, firing, or compensating senior management officials of a company, or restrictions on significantly modifying a company's policies concerning the salary, compensation, employment, or benefits plan for employees of the company;
- Restrictions on a company's ability to merge or consolidate, or on its ability to acquire, sell, lease, transfer, spin-off, recapitalize, liquidate, dissolve, or dispose of subsidiaries or major assets;
- Restrictions on a company's ability to make significant investments or expenditures;
- Requirements that a company achieve or maintain certain fundamental financial targets, such as a debt-to-equity ratio, a net worth requirement, a liquidity target, or a working capital requirement;
- Requirements that a company not exceed a specified percentage of classified assets or non-performing loans;
- Restrictions on a company's ability to pay or not pay dividends, change its dividend payment rate on any class of securities, redeem senior instruments, or make voluntary prepayment of indebtedness;
- Restrictions on a company's ability to authorize or issue additional junior equity or debt securities, or amend the terms of any equity or debt securities issued by the company;
- Restrictions on a company's ability to engage in a public offering or to list or de-list securities on an exchange;
- Restrictions on a company's ability to amend its articles of incorporation or by-laws, other than limited restrictions that are solely defensive for the investor;
- Restrictions on the removal or selection of any independent accountant, auditor, or investment banker;
- Restrictions on a company's ability to alter significantly accounting methods and policies, or its regulatory, tax, or corporate status, such as converting from a stock corporation to a limited liability company.

Each of these examples would impose significant restrictions on fundamental business decisions of a company. A significant noncontrolling equity investor should not have a contractual right that provides outsized influence or veto power over these types of decisions.

Although contracts that significantly limit discretion are most often found directly in agreements between an investing company and a target company, the Board has encountered such contractual provisions in other types of documents and in other contexts. For example, arrangements between an investing company and the officers, directors, or principal shareholders of a target company may include contractual provisions that significantly limit the discretion of the individuals who make the major operational or policy decisions of the company. The Board may view such arrangements as limiting the target company's discretion over major decisions.

The proposal also would include a set of examples of rights that generally would not be considered to restrict significantly the discretion of a company over its major operational or policy decisions.[81] In most cases, the Board has not considered contractual provisions that are purely defensive for an investor, or that allow an investor reasonable access to information about a company, to constitute significant restrictions over the discretion of a company. Covenants that require a company to comply with applicable law are also generally not viewed as raising

[80] For purposes of this restriction, a contractual arrangement between the first company and a subsidiary of the second company, or between a subsidiary of the first company and the second company, could constitute a limiting contractual right of the first company over the second company.

[81] Provisions that generally would not raise controlling influence concerns could nonetheless raise safety and soundness concerns depending on the facts and circumstances.

controlling influence concerns. Similarly, standard provisions of investment agreements and shareholders agreements, such as ''most-favored nation'' clauses, market standard transfer and sale restrictions, and arrangements to preserve tax benefits have not been considered to raise controlling influence concerns for investors.

Provided below are the proposed rule's examples of contractual provisions that generally would not raise significant controlling influence concerns:

- A restriction on a company's ability to issue securities senior to the non-common stock securities owned by the investor;
- A requirement that a company provide the investor with financial reports of the type ordinarily available to common stockholders;
- A requirement that a company maintain its corporate existence;
- A requirement that a company consult with the investor on a reasonable periodic basis;
- A requirement that a company comply with applicable statutory and regulatory requirements;
- A requirement that a company provide the investor with notice of the occurrence of material events affecting the company or its significant assets;
- A market standard ''most-favored nation'' requirement that the investor receive similar contractual rights as those held by other investors in a company; or
- Drag-along rights, tag-along rights, rights of first or last refusal, or stock transfer restrictions related to preservation of tax benefits of a company, such as S-corporation status and tax carry forwards, or other similar rights.

The Board generally has not considered these types of rights to provide a company with a significant degree of control over another company.

Question 51: Should the scope of ''limiting contractual right'' be expanded or reduced? If so, what types of contractual provisions should be covered or not covered? Are there additional examples of contractual rights that should be included in either list of examples?

Question 52: What other common types of contractual provisions generally provide a company with the ability to exercise a controlling influence over another company and should such contractual provisions be listed in the Board's regulation as another example?

F. Director Representatives

As discussed previously, the Board has long taken the position that director representatives of a company serving on the board of directors of a second company are an avenue through which the first company may exercise a controlling influence over the second company. Questions often have arisen, however, about whether an individual on the board of directors of the second company should be considered a director representative of the first company.

To provide more clarity on this question, the proposal would provide that a director is a director representative of a company if the director (i) is a current director, employee, or agent of the company; (ii) was a director, employee, or agent of the company within the preceding two years; or (iii) is an immediate family member of an individual who is a current director, employee, or agent of the company, or was a director, employee, or agent of the company within the preceding two years. In addition, the proposal would state that a director is a director representative of a company if the director was proposed to serve as a director by the company, whether by exercise of a contractual right or otherwise. The proposal further would specify that a nonvoting observer would not be a director representative. These standards are not intended to provide an exhaustive definition of a director representative, but would provide significant clarity regarding whether a director qualifies as a director representative of a particular investing company.

Question 53: Does the proposal provide sufficient clarity on the standards for determining whether a director of a company is a director representative of another company?

Question 54: How and why should the proposal be revised to limit or expand the scope of directors who are considered director representatives of a company? Are there any classes of directors that should be treated differently than the proposal would provide?

G. Investment Advisers

The proposal would define investment adviser for purposes of the proposed presumptions to mean a company that is registered as an investment adviser with the SEC under the Advisers Act,[82] a company registered with the Commodity Futures Trading Commission (''CFTC'') as a commodity trading advisor under the Commodity Exchange Act,[83] a company that is a foreign equivalent of an investment adviser or commodity trading advisor registered with the SEC or CFTC, respectively, or a company that engages in any of the activities set forth in section 225.28(b)(6)(i) through (iv) of the Board's Regulation Y. This definition is intended to cover a broad range of activities that are generally considered to be included in the general category of investment advisory services.

Question 52: Should the definition of investment adviser be expanded to cover additional activities or types of registrations or should the definition be narrowed in any way?

IV. Application to Savings and Loan Holding Companies

As noted above, the Board would apply the proposal to savings and loan holding companies to the maximum extent permitted by law. HOLA defines control in a substantially similar manner as the BHC Act.[84] With respect to controlling influence, HOLA provides that a person controls a savings association or other company ''if the Board determines, after reasonable notice and opportunity for hearing, that such person directly or indirectly exercises a controlling influence over the management or policies of such savings association or other company.'' [85] This is a substantially similar standard for controlling influence as provided in the BHC Act.[86] The Board previously recognized that the statutory control framework under the BHC Act and HOLA are nearly identical when the Board originally promulgated Regulation LL and determined to apply identical procedures for reviewing control determinations to savings and loan holding companies as applied to bank holding companies under Regulation Y.[87] The Board stated that it would review investments and relationships with savings and loan holding companies using the current practices and policies applicable to bank holding companies to the extent possible.[88] Following this principle, the proposal would incorporate the proposed control presumptions and related revisions into the Board's Regulation LL for savings and loan holding companies in essentially the same manner as into the

[82] 15 U.S.C. 80b–1 *et seq.*

[83] 7 U.S.C. 1 *et seq.*

[84] *Compare* 12 U.S.C. 1467a(a)(2) (HOLA) *with* 12 U.S.C. 1841(a)(2) (BHC Act).

[85] 12 U.S.C. 1467a(a)(2)(D).

[86] *See* 12 U.S.C. 1841(a)(2)(C).

[87] 76 FR 56508, 56509 (Sept. 13, 2011).

[88] *Id.*

Board's Regulation Y for bank holding companies.

A. Control Under HOLA Compared to the BHC Act

Although controlling influence is defined similarly under HOLA and the BHC Act, there are several differences between the ''control'' definitions used in each statute. First, under HOLA, the definition of control applies to both individuals and companies controlling other companies.[89] Under the BHC Act, control is limited to companies controlling other companies.[90] Second, under HOLA, a person controls a company if the person has more than 25 percent of the voting securities of the company, rather than 25 percent or more under the BHC Act.[91] Third, unlike the BHC Act, HOLA specifies that a general partner of a partnership controls the partnership, a trustee of a trust controls the trust, and a person that has contributed more than 25 percent of the capital of a company controls the company.[92] Finally, HOLA does not include the BHC Act's presumption of noncontrol for a company with less than 5 percent voting in another company.[93] Despite these differences, the Board believes that the statutory construct for controlling influence under HOLA is sufficiently similar to the BHC Act that it is appropriate to apply the same presumptions and related provisions to determinations of controlling influence under each statute.

Under the proposal, the same presumption of control based on total equity ownership would apply for purposes of the BHC Act and HOLA. This element of the proposal could be viewed as inconsistent with the 25 percent of contributed capital standard under HOLA. However, the Board's proposed definition of total equity would rely on GAAP shareholders' equity, not contributed capital. The Board believes that it is appropriate to view total equity and contributed capital as different concepts. Regulation LL would continue to provide that a person who has contributed more than 25 percent of the capital of a company has control of the company.[94]

Question 55: Should the Board provide for any different presumptions of control under Regulation LL? If so, what different presumptions and why?

B. Proposed Revisions to Regulation LL

Under the proposal, the proposed presumptions and the related amendments to Regulation Y also would be added to Regulation LL, with limited changes to reflect the relevant differences between control under the BHC Act and HOLA. The proposed revisions to defined terms would be located in section 238.2 of Regulation LL. The proposed revisions to the calculation of the percentage of a class of securities controlled by a person would be located in section 238.10 of Regulation LL. The proposed revisions related to control proceedings, including the proposed presumptions of control and noncontrol, would be located in subpart C of Regulation LL.

Question 56: What additional changes to the proposal, if any, should the Board make to account for differences between the BHC Act and HOLA?

V. Administrative Law Matters

A. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA), the Board may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Board reviewed the proposed rule and determined that it does not create any new or revise any existing collection of information under section 3504(h) of title 44.

B. Regulatory Flexibility Act

The Board is providing an initial regulatory flexibility analysis with respect to this proposed rule. The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities. In connection with a proposed rule, the RFA requires an agency to prepare an Initial Regulatory Flexibility Analysis describing the impact of the rule on small entities or to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. An initial regulatory flexibility analysis must contain (1) a description of the reasons why action by the agency is being considered; (2) a succinct statement of the objectives of, and legal basis for, the proposed rule; (3) a description of, and, where feasible, an estimate of the number of small entities to which the proposed rule will apply; (4) a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; (5) an identification, to the extent practicable, of all relevant federal rules which may duplicate, overlap with, or conflict with the proposed rule; and (6) a description of any significant alternatives to the proposed rule which accomplish its stated objectives.

The Board has considered the potential impact of the proposed rule on small entities in accordance with the RFA. Under regulations issued by the Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of $550 million or less and trust companies with total assets of $38.5 million or less. As of June 30, 2018, there were approximately 3,053 small bank holding companies, 184 small savings and loan holding companies, and 541 small state member banks. The proposed rule may also have implications for additional entities that have material relationships with banking organizations; however, the scope of potentially affected entities and thus the extent to which affected entities are small entities under the regulations of the Small Business Administration, is not known. Based on its analysis and for the reasons stated below, the Board believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing and inviting comment on this initial regulatory flexibility analysis. A final regulatory flexibility analysis will be conducted after comments received during the public comment period have been considered.

As discussed in detail above, the proposed rule would revise the Board's regulations for purposes of determining whether a company controls another company under the BHC Act or HOLA, as applicable, by virtue of the first company having a controlling influence over the second company. The proposal consists of a series of rebuttable presumptions of control, a rebuttable presumption of noncontrol, and various ancillary items such as definitions of terms used in the proposed presumptions. The proposed presumptions of control generally would be consistent with the Board's current practice with respect to controlling influence, with certain targeted adjustments. In addition, although the proposed presumptions

[89] 12 U.S.C. 1467a(a)(2).

[90] *Id.*

[91] 12 U.S.C. 1467a(2)(A)–(B) and 1841(a)(2)(A).

[92] 12 U.S.C. 1467a(2)(B)–(C).

[93] 12 U.S.C. 1841(a)(3).

[94] 12 CFR 238.2(e)(2). Contributed capital has generally been understood to mean paid-in capital.

would provide the public with greater transparency into the Board's views on controlling influence, the proposed presumptions would only apply in the context of a proceeding before the Board to determine whether one company has a controlling influence over another company.

A main impact of the proposal would be to enhance transparency to the public around the Board's views on controlling influence. This should enhance the efficiency of investments into and by banking organizations by providing greater clarity and certainty on the Board's views. This could result in a material reduction in burden for certain banking organizations or other companies. However, the impact would be realized in the context of discretionary transactions, rather than as a continuous benefit. In addition, the reduction in burden would be concentrated in companies engaged in the particular types of investments where controlling influence is a concern for the parties involved, rather a reduction in burden applicable to all transactions.

The Board does not expect that the proposal would impose a significant cost on small banking organizations due to compliance, recordkeeping, and reporting updates from this proposal. The proposal generally would not impact banking organizations in the ordinary course; there would be no regular compliance, recordkeeping, or reporting costs associated with the proposal. In addition, the Board is aware of no other federal rules that duplicate, overlap, or conflict with the proposed changes to the proposed control rules. Therefore, the Board believes that the proposed rule will not have a significant economic impact on small banking organizations supervised by the Board and therefore believes that there are no significant alternatives to the proposed rule that would reduce the economic impact on small banking organizations supervised by the Board.

The Board welcomes comment on all aspects of its analysis. In particular, the Board requests that commenters describe the nature of any impact on small entities and provide empirical data to illustrate and support the extent of the impact.

C. Solicitation of Comments of Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board has sought to present the proposed rule in a simple and straightforward manner, and invite comment on the use of plain language. For example:

- Has the Board organized the material to suit your needs? If not, how could they present the rule more clearly?
- Are the requirements in the rule clearly stated? If not, how could the rule be more clearly stated?
- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would achieve that?
- Is this section format adequate? If not, which of the sections should be changed and how?
- What other changes can the Board incorporate to make the regulation easier to understand?

List of Subjects

12 CFR Part 225

Administrative practice and procedure, Banks, Banking, Capital planning, Holding companies, Reporting and recordkeeping requirements, Securities, Stress testing.

12 CFR Part 238

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Holding companies, Securities.

Authority and Issuance

For the reasons stated in the **SUPPLEMENTARY INFORMATION**, the Board of Governors of the Federal Reserve System proposes to amend 12 CFR chapter II as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

■ 1. The authority citation for part 225 continues to read as follows:

Authority: 2 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3906, 3907, and 3909; 15 U.S.C. 1681s, 1681w, 6801 and 6805.

Subpart A—General Provisions

■ 2. In § 225.2:

■ a. Revise paragraphs (e)(2) and (q)(2) and

■ b, Add paragraph (u).

The revisions and additions read as follows:

§ 225.2 Definitions.

* * * * *

(e) * * *

(2) A bank or other company is deemed to control voting securities or assets owned, controlled, or held, directly or indirectly:

(i) By the bank or other company, or by any subsidiary of the bank or other company;

(ii) That the bank or other company has power to vote or to dispose of;

(iii) In a fiduciary capacity (including by pension and profit-sharing trusts) for the benefit of the shareholders, members, or employees (or individuals serving in similar capacities) of the bank or other company or any of its subsidiaries;

(iv) In a fiduciary capacity for the benefit of the bank or other company or any of its subsidiaries; or

(v) According to the standards under section 225.9 of this part.

(vi) Notwithstanding paragraph (e)(2)(i) through (v), a bank or other company does not control any voting securities that are controlled by a company that is not a direct or indirect subsidiary of the bank or other company as a result of an investment by the bank or other company in the company that controls the voting securities.

* * * * *

(q) * * *

(2) *Nonvoting securities.* Common shares, preferred shares, limited partnership interests, limited liability company interests, or similar interests are not *voting securities* if:

(i) Any voting rights associated with the securities are limited solely to the type customarily provided by statute with regard to matters that would significantly and adversely affect the rights or preference of the security, such as the issuance of additional amounts or classes of senior securities, the modification of the terms of the security, the dissolution of the issuing company, or the payment of dividends by the issuing company when preferred dividends are in arrears;

(ii) The securities represent an essentially passive investment or financing device and do not otherwise provide the holder with control over the issuing company; and

(iii) The securities do not entitle the holder, by statute, charter, or in any manner, to select or to vote for the selection of directors, trustees, or partners (or persons exercising similar functions) of the issuing company; except that limited partnership interests or membership interests in limited liability companies are not voting securities due to voting rights that are limited solely to voting for the removal of a general partner or managing

member (or persons exercising similar functions at the company) for cause, to replace a general partner or managing member (or persons exercising similar functions at the company) due to incapacitation or following the removal of such person, or to continue or dissolve the company after removal of the general partner or managing member (or persons exercising similar functions at the company).

* * * * *

(u) *Voting percentage.* For purposes of this part, the percentage of a class of a company's voting securities controlled by a person is the greater of:

(1) The quotient, expressed as a percentage, of the number of shares of the class of voting securities controlled by the person, divided by the number of shares of the class of voting securities that are issued and outstanding, both as determined under section 225.9 of this part; and

(2) The quotient, expressed as a percentage, of the number of votes that may be cast by the person on the voting securities controlled by the person, divided by the total votes that are legally entitled to be cast by the issued and outstanding shares of the class of voting securities, both as determined under section 225.9 of this part.

* * * * *

■ 3. Section 225.9 is added to read as follows:

§ 225.9 Control over securities.

(a) *Contingent rights, convertible securities, options, and warrants.* (1) A person that controls a voting security, nonvoting security, option, warrant, or other financial instrument that is convertible into, exercisable for, exchangeable for, or otherwise may become a voting security or a nonvoting security controls each voting security or nonvoting security that could be acquired as a result of such conversion, exercise, exchange, or similar occurrence.

(2) If a financial instrument of the type described in paragraph (a)(1) is convertible into, exercisable for, exchangeable for, or otherwise may become a number of voting securities or nonvoting securities that varies according to a formula, rate, or other variable metric, the number of voting securities or nonvoting securities controlled under paragraph (a)(1) is the maximum number of voting securities or nonvoting securities that the financial instrument could be converted into, be exercised for, be exchanged for, or otherwise become under the formula, rate, or other variable metric.

(3) Notwithstanding paragraph (a)(1) of this section, a person does not control voting securities due to controlling a financial instrument if the financial instrument:

(i) By its terms is not convertible into, is not exercisable for, is not exchangeable for, and may not otherwise become voting securities in the hands of the person or an affiliate of the person; and

(ii) By its terms the financial instrument is only transferable:

(A) In a widespread public distribution;

(B) To an affiliate of the person or to the issuing company;

(C) In transfers in which no transferee (or group of associated transferees) would receive 2 percent or more of the outstanding securities of any class of voting securities of the issuing company; or

(D) To a transferee that would control more than 50 percent of every class of the voting securities of the issuing company without any transfer from the person.

(4) Notwithstanding any other paragraph of this section, a person that has agreed to acquire voting securities, nonvoting securities, or other financial instruments pursuant to a securities purchase agreement does not control such voting securities, nonvoting securities, or financial instruments until the person acquires the voting securities, nonvoting shares or other financial instruments.

(5) Notwithstanding any other paragraph of this section, a right that provides a person the ability to acquire securities in future issuances or to convert nonvoting securities into voting securities does not cause the person to control the voting securities or nonvoting securities that could be acquired under the right, so long as the right does not allow the person to acquire a higher percentage of the class of voting securities than the person controlled immediately prior to the future issuance or conversion.

(6) For purposes of determining the percentage of a class of voting securities or the total equity percentage of a company controlled by a person that controls a financial instrument of the type described in paragraph (a)(1) of this section:

(A) The voting securities or nonvoting securities controlled by the person under paragraphs (a)(1) through (5) are deemed to be issued and outstanding, and

(B) Any voting securities or nonvoting securities controlled by anyone other than the person under paragraph (a)(1) through (5) are not deemed to be issued and outstanding, unless by the terms of the financial instruments the voting securities or nonvoting securities controlled by the other persons must be issued and outstanding in order for the voting securities or nonvoting securities of the person to be issued and outstanding.

(b) *Restriction on securities.* A person that enters into an agreement or understanding with a second person under which the rights of the second person are restricted in any manner with respect to securities that are controlled by the second person, controls the securities of the second person, unless the restriction is:

(1) A requirement that the second person offer the securities for sale to the first person for a reasonable period of time prior to transferring the securities to a third party;

(2) A requirement that, if the second person agrees to sell the securities, the second person provide the first person with the opportunity to participate in the sale of securities by the second person;

(3) A requirement under which the second person agrees to sell its securities to a third party if a majority of shareholders agree to sell their shares to the third party;

(4) Incident to a bona fide loan transaction in which the securities serve as collateral;

(5) A short-term and revocable proxy;

(6) A restriction on transferability that continues only for a reasonable amount of time necessary to complete a transaction to transfer the shares, including the time necessary to obtain required approval from an appropriate government authority with respect to acquisition by the first person of the securities of the second person;

(7) A requirement that the second person vote the securities in favor of a specific acquisition of control of the issuing company, or against competing transactions, if the restriction continues only for a reasonable amount of time necessary to complete the transaction, including the time necessary to obtain required approval from an appropriate government authority with respect to an acquisition or merger; or

(8) An agreement among shareholders of the issuing company intended to preserve the tax status or tax benefits of the company, such as qualification of the issuing company as a Subchapter S corporation, as defined in 26 U.S.C. 1361(a)(1) or any successor statute, or prevention of events that could impair deferred tax assets, such as net operating loss carryforwards, as described in 26 U.S.C. 382 or any successor statute.

(c) *Securities held by senior management officials or controlling*

equity holders of a company. A company that controls 5 percent or more of the voting securities of another company controls all securities issued by the second company that are controlled by senior management officials, directors, or controlling shareholders of the first company, or by immediate family members of such persons.

(d) *Reservation of authority.* Notwithstanding paragraphs (a) through (c) of this section, the Board may determine that securities are or are not controlled by a company based on the facts and circumstances presented.

■ 4. Section 225.31 is revised to read as follows:

§ 225.31 Control proceedings.

(a) *Preliminary determination of control.* (1) The Board in its sole discretion may issue a preliminary determination of control under the procedures set forth in this section in any case in which the Board determines, based on consideration of the facts and circumstances presented, that a first company has the power to exercise a controlling influence over the management or policies of a second company.

(2) If the Board makes a preliminary determination of control under this section, the Board shall send notice to the first company containing a statement of the facts upon which the preliminary determination is based.

(b) *Response to preliminary determination of control.* (1) Within 30 calendar days after issuance by the Board of a preliminary determination of control or such longer period permitted by the Board in its discretion, the first company against whom the preliminary determination has been made shall:

(i) Consent to the preliminary determination of control and either:

(A) Submit for the Board's approval a specific plan for the prompt termination of the control relationship; or

(B) File an application or notice under this part, as applicable; or

(ii) Contest the preliminary determination by filing a response, setting forth the facts and circumstances in support of its position that no control exists, and, if desired, requesting a hearing or other proceeding.

(2) If the first company fails to respond to the preliminary determination of control within 30 days, the first company will be deemed to have waived its right to present additional information to the Board or to request a hearing or other proceeding regarding the preliminary determination of control.

(c) *Hearing and final determination.* (1) The Board shall order a hearing or other appropriate proceeding upon the petition of a first company that contests a preliminary determination of control if the Board finds that material facts are in dispute. The Board may, in its discretion, order a hearing or other appropriate proceeding without a petition for such a proceeding by the first company.

(2) At a hearing or other proceeding, any applicable presumptions established under this subpart shall be considered in accordance with the Federal Rules of Evidence and the Board's Rules of Practice for Formal Hearings (12 CFR part 263).

(3) After considering the submissions of the first company and other evidence, including the record of any hearing or other proceeding, the Board will issue a final order determining whether the first company has the power to exercise a controlling influence over the management or policies of the second company. If a controlling influence is found, the Board may direct the first company to terminate the control relationship or to file an application or notice for the Board's approval to retain the control relationship.

(d) *Rebuttal of presumptions of control of a company.* (1) In connection with contesting a preliminary determination of control under paragraph (b)(1)(ii) of this section, a first company may submit to the Board evidence or any other relevant information related to its control of a second company.

(2) Evidence or other relevant information submitted to the Board pursuant to paragraph (d)(1) must be in writing and may include a description of all current and proposed relationships between the first company and the second company, including relationships of the type that are identified under any of the rebuttable presumptions in sections 225.32 and 225.33 of this part, copies of any formal agreements related to such relationships, and a discussion regarding why the Board should not determine the first company to control the second company.

(e) *Definitions.* For purposes of this subpart:

(1) *Board of directors* means the board of directors of a company or a set of individuals exercising similar functions at a company.

(2) *Director representative* means, with respect to a first company,

(i) Any individual that serves on the board of directors of a second company and:

(A) Was nominated or proposed to serve by the first company;

(B) Is a current employee, director, or agent of the first company;

(C) Served as an employee, director, or agent of the first company during the immediately preceding two years; or

(D) Is a member of the immediate family of any employee, director, or agent of the first company.

(ii) A director representative does not include a nonvoting observer.

(3) *First company* means the company whose potential control of a second company is the subject of determination by the Board under this subpart.

(4) *Investment adviser* means a company that:

(i) Is registered as an investment adviser with the Securities and Exchange Commission under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*);

(ii) Is registered as a commodity trading advisor with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*);

(iii) Is a foreign equivalent of an investment adviser or commodity trading advisor, as described in paragraph (e)(4)(i) and (ii) above; or

(iv) Engages in any of the activities set forth in § 225.28(b)(6)(i) through (iv) of this part.

(5) *Limiting contractual right* means a contractual right of the first company that would allow the first company to restrict significantly, directly or indirectly, the discretion of the second company, including its senior management officials and directors, over operational and policy decisions of the second company.

(i) A limiting contractual right includes, but is not limited to, a right that allows the first company to restrict or to exert significant influence over decisions related to:

(A) Activities in which the second company may engage, including a prohibition on entering into new lines of business, making substantial changes to or discontinuing existing lines of business, or entering into a contractual arrangement with a third party that imposes significant financial obligations on the second company;

(B) How the second company directs the proceeds of the first company's investment;

(C) Hiring, firing, or compensating one or more senior management officials of the second company, or modifying the second company's policies or budget concerning the salary, compensation, employment, or benefits plan for its employees;

(D) The second company's ability to merge or consolidate, or on its ability to

acquire, sell, lease, transfer, spin-off, recapitalize, liquidate, dissolve, or dispose of subsidiaries or assets;

(E) The second company's ability to make investments or expenditures;

(F) The second company achieving or maintaining a financial target or limit, including, for example, a debt-to-equity ratio, a fixed charges ratio, a net worth requirement, a liquidity target, a working capital target, or a classified assets or nonperforming loans limit;

(G) The second company's payment of dividends on any class of securities, redemption of senior instruments, or voluntary prepayment of indebtedness;

(H) The second company's ability to authorize or issue additional junior equity or debt securities, or amend the terms of any equity or debt securities issued by the second company;

(I) The second company's ability to engage in a public offering or to list or de-list securities on an exchange, other than a right that allows the securities of the first company to have the same status as other securities of the same class;

(J) The second company's ability to amend its articles of incorporation or by-laws, other than in a way that is solely defensive for the first company;

(K) The removal or selection of any independent accountant, auditor, investment adviser, or investment banker employed by the second company;

(L) The second company's ability to significantly alter accounting methods and policies, or its regulatory, tax, or liability status (*e.g.,* converting from a stock corporation to a limited liability company); and

(ii) A limiting contractual right does not include a contractual right that would not allow the first company to significantly restrict, directly or indirectly, the discretion of the second company over operational and policy decisions of the second company, such as:

(A) A right that allows the first company to restrict or to exert significant influence over decisions relating to the second company's ability to issue securities senior to securities owned by the first company;

(B) A requirement that the first company receive financial reports of the type ordinarily available to common stockholders;

(C) A requirement that the second company maintain its corporate existence;

(D) A requirement that the second company consult with the first company on a reasonable periodic basis;

(E) A requirement that the second company provide notices of the occurrence of material events affecting the second company;

(F) A requirement that the second company comply with applicable statutory and regulatory requirements;

(G) A market standard requirement that the first company receive similar contractual rights as those held by other investors in the second company;

(H) A requirement that the first company be able to purchase additional shares issued by the second company in order to maintain the first company's percentage ownership in the second company;

(I) A requirement that the second company ensure that any shareholder who intends to sell its shares of the second company provide other shareholders of the second company or the second company itself the opportunity to purchase the shares before the shares can be sold to a third party; or

(J) A requirement that the second company take reasonable steps to ensure the preservation of tax status or tax benefits, such as status of the second company as a Subchapter S corporation or the protection of the value of net operating loss carry-forwards.

(6) *Second company* means the company whose potential control by a first company is the subject of determination by the Board under this subpart.

(7) *Senior management official* means any person who participates or has the authority to participate (other than in the capacity as a director) in major policymaking functions of a company.

(f) *Reservation of authority.* Nothing in this subpart shall limit the authority of the Federal Reserve to take any supervisory or enforcement action otherwise permitted by law, including an action to address unsafe or unsound practices or conditions, or violations of law.

■ 5. Section 225.32 is added to read as follows:

§ 225.32 Rebuttable presumptions of control of a company.

(a) *General.* (1) In any proceeding under § 225.31(b)(2) or (c) of this part, a first company is presumed to control a second company in the situations described in subsections (b) through (i) of this section. The Board also may find that a first company controls a second company based on other facts and circumstances.

(2) For purposes of the presumptions in this section, any company that is a subsidiary of the first company and also a subsidiary of the second company is considered to be a subsidiary of the first company and not a subsidiary of the second company.

(b) *Management contract or similar agreement.* The first company enters into any agreement, understanding, or management contract (other than to serve as investment adviser) with the second company, under which the first company directs or exercises significant influence or discretion over the general management, overall operations, or core business or policy decisions of the second company. Examples of such agreements include where the first company is a managing member, trustee, or general partner of the second company, or exercises similar powers and functions.

(c) *Total equity.* The first company controls one third or more of the total equity of the second company.

(d) *Ownership or control of 5 percent or more of voting securities.* The first company controls 5 percent or more of the outstanding securities of any class of voting securities of the second company, and:

(1) (i) Director representatives of the first company or any of its subsidiaries comprise 25 percent or more of the board of directors of the second company or any of its subsidiaries; or

(ii) Director representatives of the first company or any of its subsidiaries are able to make or block the making of major operational or policy decisions of the second company or any of its subsidiaries;

(2) Two or more employees or directors of the first company or any of its subsidiaries serve as senior management officials of the second company or any of its subsidiaries;

(3) An employee or director of the first company or any of its subsidiaries serves as the chief executive officer, or serves in a similar capacity, of the second company or any of its subsidiaries;

(4) The first company or any of its subsidiaries enters into transactions or has business relationships with the second company or any of its subsidiaries that generate in the aggregate 10 percent or more of the total annual revenues or expenses of the first company or the second company, each on a consolidated basis;

(5) The first company or any of its subsidiaries has any limiting contractual right with respect to the second company or any of its subsidiaries, unless such limiting contractual right is part of an agreement to merge with or make a controlling investment in the second company that is reasonably expected to close within one year and such limiting contractual right is designed to ensure that the second

company continues to operate in the ordinary course until the merger or investment is consummated or such limiting contractual right requires the second company to take an action necessary for the merger or investment to be consummated; or

(6) Senior management officials and directors of the first company and its subsidiaries, together with their immediate family members and the first company and its subsidiaries, own, control, or have power to vote 25 percent or more of any class of voting securities of the second company, unless the first company and its subsidiaries control less than 15 percent of each class of voting securities of the second company and the senior management officials and directors of the first company and its subsidiaries, together with their immediate family members, own, control, or have power to vote 50 percent or more of each class of voting securities of the second company.

(e) *Ownership or control of 10 percent or more of voting securities.* The first company controls 10 percent or more of the outstanding securities of any class of voting securities of the second company, and:

(1) The first company or any of its subsidiaries propose a number of director representatives to the board of directors of the second company or any of its subsidiaries in opposition to the nominees proposed by the management or board of directors of the second company or any of its subsidiaries that, together with any director representatives of the first company or any of its subsidiaries on the board of directors of the second company or any of its subsidiaries, exceed the number of director representatives that the first company could have without being presumed to control the second company under § 225.32(d)(1)(i) of this part;

(2) Director representatives of the first company and its subsidiaries comprise more than 25 percent of any committee of the board of directors of the second company or any of its subsidiaries that can take actions that bind the second company or any of its subsidiaries; or

(3) The first company or any of its subsidiaries enters into transactions or has business relationships with the second company or any of its subsidiaries that:

(i) Are not on market terms; or

(ii) Generate in the aggregate 5 percent or more of the total annual revenues or expenses of the first company or the second company, each on a consolidated basis.

(f) *Ownership or control of 15 percent or more of voting securities.* The first company controls 15 percent or more of the outstanding securities of any class of voting securities of the second company, and:

(1) The first company controls 25 percent or more of the total equity of the second company;

(2) A director representative of the first company or of any of its subsidiaries serves as the chair of the board of directors of the second company or any of its subsidiaries;

(3) One or more employees or directors of the first company or any of its subsidiaries serves as a senior management official of the second company or any of its subsidiaries; or

(4) The first company or any of its subsidiaries enters into transactions or has business relationships with the second company or any of its subsidiaries that generate in the aggregate 2 percent or more of the total annual revenues or expenses of the first company or the second company, each on a consolidated basis.

(g) *Accounting consolidation.* The first company consolidates the second company on its financial statements prepared under U.S. generally accepted accounting principles.

(h) *Control of an investment fund.* (1) The first company serves as an investment adviser to the second company, the second company is an investment fund, and the first company, directly or indirectly, or acting through one or more other persons:

(i) Controls 5 percent or more of the outstanding securities of any class of voting securities of the second company; or

(ii) Controls 25 percent or more of the total equity of the second company.

(2) The presumption of control in paragraph (h)(1) of this section does not apply if the first company organized and sponsored the second company within the preceding 12 months.

(i) *Divestiture of control.* (1) The first company controlled the second company under paragraph (e)(1)(i) or (ii) of section 225.2 of this part at any time during the prior two years and the first company controls 15 percent or more of any class of voting securities of the second company.

(2) Notwithstanding paragraph (i)(1) of this section, a first company will not be presumed to control a second company under this paragraph if 50 percent or more of the outstanding securities of each class of voting securities of the second company is controlled by a person that is not a senior management official or director of the first company, or by a company that is not an affiliate of the first company.

(j) *Registered investment company.* The presumptions of control in this section do not apply if:

(1) The second company is an investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*);

(2) The business relationships between the first company and the second company are limited to investment advisory, custodian, transfer agent, registrar, administrative, distributor, and securities brokerage services provided by the first company to the second company;

(3) Director representatives of the first company or any of its subsidiaries comprise 25 percent or less of the board of directors or trustees of the second company; and

(4) (i) The first company controls less than 5 percent of the outstanding securities of each class of voting securities of the second company and less than 25 percent of the total equity of the second company, or

(ii) The first company organized and sponsored the second company within the preceding 12 months.

(k) *Shares held in a fiduciary capacity.* The presumptions of control in this section do not apply to the extent that the first company or any of its subsidiaries control the securities of the second company or any of its subsidiaries in a fiduciary capacity without sole discretionary authority to exercise the voting rights.

■ 6. Section 225.33 is added to read as follows:

§ 225.33 Rebuttable presumption of noncontrol of a company.

(a) In any proceeding under § 225.31(b)(2) or (c) of this part, a first company is presumed not to control a second company if:

(1) The first company controls less than 10 percent of the outstanding securities of each class of voting securities of the second company, and

(2) The first company is not presumed to control the second company under § 225.32 of this part.

(b) In any proceeding under this subpart, or judicial proceeding under the Bank Holding Company Act, other than a proceeding in which the Board has made a preliminary determination that a first company has the power to exercise a controlling influence over the management or policies of a second company, a first company may not be held to have had control over a second company at any given time, unless the first company, at the time in question,

controlled 5 percent or more of the outstanding securities of any class of voting securities of the second company, or had already been found to have control on the basis of the existence of a controlling influence relationship.

■ 7. Section 225.34 is added to read as follows:

§ 225.34 Total Equity.

(a) *General.* For purposes of this subpart, the total equity controlled by a first company in a second company that is organized as a stock corporation and prepares financial statements pursuant to U.S. generally accepted accounting principles is calculated as described in paragraph (b) of this section. With respect to a second company that is not organized as a stock corporation or that does not prepare financial statements pursuant to U.S. generally accepted accounting principles, the first company's total equity in the second company will be calculated so as to be reasonably consistent with the methodology described in paragraph (b) of this section, while taking into account the legal form of the second company and the accounting system used by the second company to prepare financial statements.

(b) *Calculation of total equity.* (1) *Total Equity.* The first company's total equity in the second company, expressed as a percentage, is equal to:

(i) The sum of Investor Common Equity and, for each class of preferred stock issued by the second company, Investor Preferred Equity, divided by

(ii) Issuer Shareholders' Equity.

(2) *Investor Common Equity* equals the greater of:

(i) Zero, and

(ii) The quotient of the number of shares of common stock of the second company that are controlled by the first company divided by the total number of shares of common stock of the second company that are issued and outstanding, multiplied by the amount of shareholders' equity of the second company not allocated to preferred stock under U.S. generally accepted accounting principles.[95]

(3) *Investor Preferred Equity* equals, for each class of preferred stock issued by the second company, the greater of:

(i) Zero, and

(ii) The quotient of the number of shares of the class of preferred stock of the second company that are controlled by the first company divided by the total number of shares of the class of preferred stock that are issued and outstanding, multiplied by the amount of shareholders' equity of the second company allocated to the class of preferred stock under U.S. generally accepted accounting principles.

(c) *Consideration of debt instruments and other interests in total equity.* (1) For purposes of the total equity calculation in paragraph (b) of this section, a debt instrument or other interest issued by the second company that is held by the first company may be treated as an equity instrument if that debt instrument or other interest is functionally equivalent to equity.

(2) For purposes of paragraph (b)(1) of this section, the principal amount of all debt instruments and the market value of all other interests that are functionally equivalent to equity that are owned or controlled by the first company are added to the sum under paragraph (b)(1)(i) of this section, and the principal amount of all debt instruments and the market value of all other interests that are functionally equivalent to equity that are outstanding are added to Issuer Shareholders' Equity.

(3) For purposes of paragraph (b)(1) of this section, a debt instrument issued by the second company may be considered functionally equivalent to equity if it has equity-like characteristics, such as:

(i) Extremely long-dated maturity;

(ii) Subordination to other debt instruments issued by the second company;

(ii) Qualification as regulatory capital under any regulatory capital rules applicable to the second company;

(iii) Qualification as equity under applicable tax law;

(iv) Qualification as equity under U.S. generally accepted accounting principles or other applicable accounting standards;

(v) Inadequacy of the equity capital underlying the debt at the time of the issuance of the debt; and

(vi) Issuance not on market terms.

(4) For purposes of paragraph (b)(1) of this section, an interest that is not a debt instrument issued by the second company may be considered functionally equivalent to equity if it has equity-like characteristics, such as entitling its owner to a share of the profits of the second company.

(d) *Investments in parent companies of a second company.* If a first company controls equity interests of one or more companies that directly or indirectly control the second company (parent company), the total equity of the first company in the second company is equal to:

(1) The first company's total equity of the second company as calculated under paragraph (b) of this section, plus

(2) The product of the first company's total equity of each parent company, calculated in accordance with paragraph (b) of this section, multiplied by the parent company's total equity in the second company, as calculated under paragraph (b) of this section.

(e) *Frequency of total equity calculation.* The total equity of a first company in a second company is calculated each time the first company acquires control over or ceases to control equity instruments of the second company, including any debt instruments or other interests that are functionally equivalent to equity in accordance with paragraph (c) of this section.

PART 238—SAVINGS AND LOAN HOLDING COMPANIES (REGULATION LL)

■ 8. The authority citation for part 238 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462, 1462a, 1463, 1464, 1467, 1467a, 1468, 1813, 1817, 1829e, 1831i, 1972; 15 U.S.C. 78l.

■ 9. Amend § 238.2 by:

■ a. Revising paragraphs (e) and (r)(2), and

■ b. Adding paragraph (v).

The revisions and additions read as follows:

§ 238.2 Definitions.

* * * * *

(e) A person shall be deemed to have *control* of:

(1) A savings association if the person directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 25 percent of the voting shares of such savings association, or controls in any manner the election of a majority of the directors of such association;

(2) Any other company if the person directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, or holds with power to vote, or holds proxies representing, more than 25 percent of the voting shares or rights of such other company, or controls in any manner the election or appointment of a majority of the directors or trustees of such other company, or is a general partner in or has contributed more than 25 percent of the capital of such other company;

[95] If the second company has multiple classes of common stock outstanding and different classes of common stock have different economic interests in the second company on a per share basis, the number of shares of common stock must be adjusted for purposes of this calculation so that each share of common stock has the same economic interest in the second company.

(3) A trust if the person is a trustee thereof;

(4) A savings association or any other company if the Board determines, after reasonable notice and opportunity for hearing, that such person directly or indirectly exercises a controlling influence over the management or policies of such association or other company; or

(5) Voting securities or assets owned, controlled, or held, directly or indirectly:

(i) By the savings association or other company, or by any subsidiary of the savings association or other company;

(ii) That the savings association or other company has power to vote or to dispose of;

(iii) In a fiduciary capacity (including by pension and profit-sharing trusts) for the benefit of the shareholders, members, or employees (or individuals serving in similar capacities) of the savings association or other company or any of its subsidiaries;

(iv) In a fiduciary capacity for the benefit of the bank or other company or any of its subsidiaries; or

(v) According to the standards under section 238.10 of this part.

(vi) Notwithstanding paragraph (e)(5)(i) through (v) of this section, a savings association or other company does not control any voting securities that are controlled by a company that is not a direct or indirect subsidiary of the savings association or other company as a result of an investment by the savings association or other company in the company that controls the voting securities.

* * * * *

(r) * * *

(2) *Nonvoting securities.* Common shares, preferred shares, limited partnership interests, limited liability company interests, or similar interests are not *voting securities* if:

(i) Any voting rights associated with the securities are limited solely to the type customarily provided by statute with regard to matters that would significantly and adversely affect the rights or preference of the security, such as the issuance of additional amounts or classes of senior securities, the modification of the terms of the security, the dissolution of the issuing company, or the payment of dividends by the issuing company when preferred dividends are in arrears;

(ii) The securities represent an essentially passive investment or financing device and do not otherwise provide the holder with control over the issuing company; and

(iii) The securities do not entitle the holder, by statute, charter, or in any manner, to select or to vote for the selection of directors, trustees, or partners (or persons exercising similar functions) of the issuing company; except that limited partnership interests or membership interests in limited liability companies are not voting securities due to voting rights that are limited solely to voting for the removal of a general partner or managing member (or persons exercising similar functions at the company) for cause, to replace a general partner or managing member (or persons exercising similar functions at the company) due to incapacitation or following the removal of such person, or to continue or dissolve the company after removal of the general partner or managing member (or persons exercising similar functions at the company).

* * * * *

(v) *Voting percentage.* For purposes of this part, the percentage of a class of a company's voting securities controlled by a person is the greater of:

(1) The quotient, expressed as a percentage, of the number of shares of the class of voting securities controlled by the person, divided by the number of shares of the class of voting securities that are issued and outstanding, both as determined under section 238.10 of this part; and

(2) The quotient, expressed as a percentage, of the number of votes that may be cast by the person on the voting securities controlled by the person, divided by the total votes that are legally entitled to be cast by the issued and outstanding shares of the class of voting securities, both as determined under section 238.10 of this part.

* * * * *

■ 10. Section 238.10 is added to read as follows:

Subpart A—General Provisions

§ 238.10 Control over securities.

(a) *Contingent rights, convertible securities, options, and warrants.* (1) A person that controls a voting security, nonvoting security, option, warrant, or other financial instrument that is convertible into, exercisable for, exchangeable for, or otherwise may become a voting security or a nonvoting security controls each voting security or nonvoting security that could be acquired as a result of such conversion, exercise, exchange, or similar occurrence.

(2) If a financial instrument of the type described in paragraph (a)(1) of this section is convertible into, exercisable for, exchangeable for, or otherwise may become a number of voting securities or nonvoting securities that varies according to a formula, rate, or other variable metric, the number of voting securities or nonvoting securities controlled under paragraph (a)(1) of this section is the maximum number of voting securities or nonvoting securities that the financial instrument could be converted into, be exercised for, be exchanged for, or otherwise become under the formula, rate, or other variable metric.

(3) Notwithstanding paragraph (a)(1) of this section, a person does not control voting securities due to controlling a financial instrument if the financial instrument:

(i) By its terms is not convertible into, is not exercisable for, is not exchangeable for, and may not otherwise become voting securities in the hands of the person or an affiliate of the person; and

(ii) By its terms the financial instrument is only transferable:

(A) In a widespread public distribution;

(B) To an affiliate of the person or to the issuing company;

(C) In transfers in which no transferee (or group of associated transferees) would receive 2 percent or more of the outstanding securities of any class of voting securities of the issuing company; or

(D) To a transferee that would control more than 50 percent of every class of the voting securities of the issuing company without any transfer from the person.

(4) Notwithstanding any other paragraph of this section, a person that has agreed to acquire voting securities, nonvoting securities, or other financial instruments pursuant to a securities purchase agreement does not control such voting securities, nonvoting securities, or financial instruments until the person acquires the voting securities, nonvoting shares or other financial instruments.

(5) Notwithstanding any other paragraph of this section, a right that provides a person the ability to acquire securities in future issuances or to convert nonvoting securities into voting securities does not cause the person to control the voting securities or nonvoting securities that could be acquired under the right, so long as the right does not allow the person to acquire a higher percentage of the class of voting securities than the person controlled immediately prior to the future issuance or conversion.

(6) For purposes of determining the percentage of a class of voting securities or the total equity percentage of a company controlled by a person that controls a financial instrument of the

type described in paragraph (a)(1) of this section:

(A) The voting securities or nonvoting securities controlled by the person under paragraphs (a)(1) through (5) are deemed to be issued and outstanding, and

(B) Any voting securities or nonvoting securities controlled by anyone other than the person under paragraph (a)(1) through (5) of this section are not deemed to be issued and outstanding, unless by the terms of the financial instruments the voting securities or nonvoting securities controlled by the other persons must be issued and outstanding in order for the voting securities or nonvoting securities of the person to be issued and outstanding.

(b) *Restriction on securities.* A person that enters into an agreement or understanding with a second person under which the rights of the second person are restricted in any manner with respect to securities that are controlled by the second person, controls the securities of the second person, unless the restriction is:

(1) A requirement that the second person offer the securities for sale to the first person for a reasonable period of time prior to transferring the securities to a third party;

(2) A requirement that, if the second person agrees to sell the securities, the second person provide the first person with the opportunity to participate in the sale of securities by the second person;

(3) A requirement under which the second person agrees to sell its securities to a third party if a majority of shareholders agree to sell their shares to the third party;

(4) Incident to a bona fide loan transaction in which the securities serve as collateral;

(5) A short-term and revocable proxy;

(6) A restriction on transferability that continues only for a reasonable amount of time necessary to complete a transaction to transfer the shares, including the time necessary to obtain required approval from an appropriate government authority with respect to acquisition by the first person of the securities of the second person;

(7) A requirement that the second person vote the securities in favor of a specific acquisition of control of the issuing company, or against competing transactions, if the restriction continues only for a reasonable amount of time necessary to complete the transaction, including the time necessary to obtain required approval from an appropriate government authority with respect to an acquisition or merger; or

(8) An agreement among shareholders of the issuing company intended to preserve the tax status or tax benefits of the company, such as qualification of the issuing company as a Subchapter S corporation, as defined in 26 U.S.C. 1361(a)(1) or any successor statute, or prevention of events that could impair deferred tax assets, such as net operating loss carryforwards, as described in 26 U.S.C. 382 or any successor statute.

(c) *Securities held by senior management officials or controlling equity holders of a company.* A company that controls 5 percent or more of the voting securities of another company controls all securities issued by the second company that are controlled by senior management officials, directors, or controlling shareholders of the first company, or by immediate family members of such persons.

(d) *Reservation of authority.* Notwithstanding paragraphs (a) through (c) of this section, the Board may determine that securities are or are not controlled by a company based on the facts and circumstances presented.

* * * * *

■ 11. Section 238.21 is revised to read as follows:

§ 238.21 Control proceedings.

(a) *Preliminary determination of control.* (1) The Board in its sole discretion may issue a preliminary determination of control under the procedures set forth in this section in any case in which the Board determines, based on consideration of the facts and circumstances presented, that a first company has the power to exercise a controlling influence over the management or policies of a second company.

(2) If the Board makes a preliminary determination of control under this section, the Board shall send notice to the first company containing a statement of the facts upon which the preliminary determination is based.

(b) *Response to preliminary determination of control.* (1) Within 30 calendar days after issuance by the Board of a preliminary determination of control or such longer period permitted by the Board in its discretion, the first company against whom the preliminary determination has been made shall:

(i) Consent to the preliminary determination of control and either:

(A) Submit for the Board's approval a specific plan for the prompt termination of the control relationship; or

(B) File an application or notice under this part, as applicable; or

(ii) Contest the preliminary determination by filing a response, setting forth the facts and circumstances in support of its position that no control exists, and, if desired, requesting a hearing or other proceeding.

(2) If the first company fails to respond to the preliminary determination of control within 30 days, the first company will be deemed to have waived its right to present additional information to the Board or to request a hearing or other proceeding regarding the preliminary determination of control.

(c) *Hearing and final determination.* (1) The Board shall order a hearing or other appropriate proceeding upon the petition of a first company that contests a preliminary determination of control if the Board finds that material facts are in dispute. The Board may, in its discretion, order a hearing or other appropriate proceeding without a petition for such a proceeding by the first company.

(2) At a hearing or other proceeding, any applicable presumptions established under this subpart shall be considered in accordance with the Federal Rules of Evidence and the Board's Rules of Practice for Formal Hearings (12 CFR part 263).

(3) After considering the submissions of the first company and other evidence, including the record of any hearing or other proceeding, the Board will issue a final order determining whether the first company has the power to exercise a controlling influence over the management or policies of the second company. If a controlling influence is found, the Board may direct the first company to terminate the control relationship or to file an application or notice for the Board's approval to retain the control relationship.

(d) *Rebuttal of presumptions of control of a company.*

(1) In connection with contesting a preliminary determination of control under paragraph (b)(1)(ii) of this section, a first company may submit to the Board evidence or any other relevant information related to its control of a second company.

(2) Evidence or other relevant information submitted to the Board pursuant to paragraph (d)(1) must be in writing and may include a description of all current and proposed relationships between the first company and the second company, including relationships of the type that are identified under any of the rebuttable presumptions in §§ 238.22 and 238.23 of this part, copies of any formal agreements related to such relationships, and a discussion

regarding why the Board should not determine the first company to control the second company.

(e) *Definitions.* For purposes of this subpart:

(1) *Board of directors* means the board of directors of a company or a set of individuals exercising similar functions at a company.

(2) *Director representative* means, with respect to a first company,

(i) Any individual that serves on the board of directors of a second company and:

(A) Was nominated or proposed to serve by the first company;

(B) Is a current employee, director, or agent of the first company;

(C) Served as an employee, director, or agent of the first company during the immediately preceding two years; or

(D) Is a member of the immediate family of any employee, director, or agent of the first company.

(ii) A director representative does not include a nonvoting observer.

(3) *First company* means the company whose potential control of a second company is the subject of determination by the Board under this subpart.

(4) *Investment adviser* means a company that:

(i) Is registered as an investment adviser with the Securities and Exchange Commission under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 *et seq.*);

(ii) Is registered as a commodity trading advisor with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*);

(iii) Is a foreign equivalent of an investment adviser or commodity trading advisor, as described in paragraph (e)(4)(i) and (ii) in this section above; or

(iv) Engages in any of the activities set forth in 12 CFR 225.28(b)(6)(i) through (iv).

(5) *Limiting contractual right* means a contractual right of the first company that would allow the first company to restrict significantly, directly or indirectly, the discretion of the second company, including its senior management officials and directors, over operational and policy decisions of the second company.

(i) A limiting contractual right includes, but is not limited to, a right that allows the first company to restrict or to exert significant influence over decisions related to:

(A) Activities in which the second company may engage, including a prohibition on entering into new lines of business, making substantial changes to or discontinuing existing lines of business, or entering into a contractual arrangement with a third party that imposes significant financial obligations on the second company;

(B) How the second company directs the proceeds of the first company's investment;

(C) Hiring, firing, or compensating one or more senior management officials of the second company, or modifying the second company's policies or budget concerning the salary, compensation, employment, or benefits plan for its employees;

(D) The second company's ability to merge or consolidate, or on its ability to acquire, sell, lease, transfer, spin-off, recapitalize, liquidate, dissolve, or dispose of subsidiaries or assets;

(E) The second company's ability to make investments or expenditures;

(F) The second company achieving or maintaining a financial target or limit, including, for example, a debt-to-equity ratio, a fixed charges ratio, a net worth requirement, a liquidity target, a working capital target, or a classified assets or nonperforming loans limit;

(G) The second company's payment of dividends on any class of securities, redemption of senior instruments, or voluntary prepayment of indebtedness;

(H) The second company's ability to authorize or issue additional junior equity or debt securities, or amend the terms of any equity or debt securities issued by the second company;

(I) The second company's ability to engage in a public offering or to list or de-list securities on an exchange, other than a right that allows the securities of the first company to have the same status as other securities of the same class;

(J) The second company's ability to amend its articles of incorporation or by-laws, other than in a way that is solely defensive for the first company;

(K) The removal or selection of any independent accountant, auditor, investment adviser, or investment banker employed by the second company;

(L) The second company's ability to significantly alter accounting methods and policies, or its regulatory, tax, or liability status (*e.g.,* converting from a stock corporation to a limited liability company); and

(ii) A limiting contractual right does not include a contractual right that would not allow the first company to significantly restrict, directly or indirectly, the discretion of the second company over operational and policy decisions of the second company, such as:

(A) A right that allows the first company to restrict or to exert significant influence over decisions relating to the second company's ability to issue securities senior to securities owned by the first company;

(B) A requirement that the first company receive financial reports of the type ordinarily available to common stockholders;

(C) A requirement that the second company maintain its corporate existence;

(D) A requirement that the second company consult with the first company on a reasonable periodic basis;

(E) A requirement that the second company provide notices of the occurrence of material events affecting the second company;

(F) A requirement that the second company comply with applicable statutory and regulatory requirements;

(G) A market standard requirement that the first company receive similar contractual rights as those held by other investors in the second company;

(H) A requirement that the first company be able to purchase additional shares issued by the second company in order to maintain the first company's percentage ownership in the second company;

(I) A requirement that the second company ensure that any shareholder who intends to sell its shares of the second company provide other shareholders of the second company or the second company itself the opportunity to purchase the shares before the shares can be sold to a third party; or

(J) A requirement that the second company take reasonable steps to ensure the preservation of tax status or tax benefits, such as status of the second company as a Subchapter S corporation or the protection of the value of net operating loss carry-forwards.

(6) *Second company* means the company whose potential control by a first company is the subject of determination by the Board under this subpart.

(7) *Senior management official* means any person who participates or has the authority to participate (other than in the capacity as a director) in major policymaking functions of a company.

(f) *Reservation of authority.* Nothing in this subpart shall limit the authority of the Federal Reserve to take any supervisory or enforcement action otherwise permitted by law, including an action to address unsafe or unsound practices or conditions, or violations of law.

■ 12. Sections 238.22 is added to read as follows:

§ 238.22 Rebuttable presumptions of control of a company.

(a) *General.* (1) In any proceeding under § 238.21(b)(2) or (c) of this part, a first company is presumed to control a second company in the situations described in subsections (b) through (i) of this section. The Board also may find that a first company controls a second company based on other facts and circumstances.

(2) For purposes of the presumptions in this section, any company that is a subsidiary of the first company and also a subsidiary of the second company is considered to be a subsidiary of the first company and not a subsidiary of the second company.

(b) *Management contract or similar agreement.* The first company enters into any agreement, understanding, or management contract (other than to serve as investment adviser) with the second company, under which the first company directs or exercises significant influence or discretion over the general management, overall operations, or core business or policy decisions of the second company. Examples of such agreements include where the first company is a managing member, trustee, or general partner of the second company, or exercises similar powers and functions.

(c) *Total equity.* The first company controls one third or more of the total equity of the second company.

(d) *Ownership or control of 5 percent or more of voting securities.* The first company controls 5 percent or more of the outstanding securities of any class of voting securities of the second company, and:

(1) (i) Director representatives of the first company or any of its subsidiaries comprise 25 percent or more of the board of directors of the second company or any of its subsidiaries; or

(ii) Director representatives of the first company or any of its subsidiaries are able to make or block the making of major operational or policy decisions of the second company or any of its subsidiaries;

(2) Two or more employees or directors of the first company or any of its subsidiaries serve as senior management officials of the second company or any of its subsidiaries;

(3) An employee or director of the first company or any of its subsidiaries serves as the chief executive officer, or serves in a similar capacity, of the second company or any of its subsidiaries;

(4) The first company or any of its subsidiaries enters into transactions or has business relationships with the second company or any of its subsidiaries that generate in the aggregate 10 percent or more of the total annual revenues or expenses of the first company or the second company, each on a consolidated basis;

(5) The first company or any of its subsidiaries has any limiting contractual right with respect to the second company or any of its subsidiaries, unless such limiting contractual right is part of an agreement to merge with or make a controlling investment in the second company that is reasonably expected to close within one year and such limiting contractual right is designed to ensure that the second company continues to operate in the ordinary course until the merger or investment is consummated or such limiting contractual right requires the second company to take an action necessary for the merger or investment to be consummated; or

(6) Senior management officials and directors of the first company and its subsidiaries, together with their immediate family members and the first company and its subsidiaries, own, control, or have power to vote 25 percent or more of any class of voting securities of the second company, unless the first company and its subsidiaries control less than 15 percent of each class of voting securities of the second company and the senior management officials and directors of the first company and its subsidiaries, together with their immediate family members, own, control, or have power to vote 50 percent or more of each class of voting securities of the second company.

(e) *Ownership or control of 10 percent or more of voting securities.* The first company controls 10 percent or more of the outstanding securities of any class of voting securities of the second company, and:

(1) The first company or any of its subsidiaries propose a number of director representatives to the board of directors of the second company or any of its subsidiaries in opposition to the nominees proposed by the management or board of directors of the second company or any of its subsidiaries that, together with any director representatives of the first company or any of its subsidiaries on the board of directors of the second company or any of its subsidiaries, exceed the number of director representatives that the first company could have without being presumed to control the second company under § 238.22(d)(1)(i) of this part;

(2) Director representatives of the first company and its subsidiaries comprise more than 25 percent of any committee of the board of directors of the second company or any of its subsidiaries that can take actions that bind the second company or any of its subsidiaries; or

(3) The first company or any of its subsidiaries enters into transactions or has business relationships with the second company or any of its subsidiaries that:

(i) Are not on market terms; or

(ii) Generate in the aggregate 5 percent or more of the total annual revenues or expenses of the first company or the second company, each on a consolidated basis.

(f) *Ownership or control of 15 percent or more of voting securities.* The first company controls 15 percent or more of the outstanding securities of any class of voting securities of the second company, and:

(1) The first company controls 25 percent or more of the total equity of the second company;

(2) A director representative of the first company or of any of its subsidiaries serves as the chair of the board of directors of the second company or any of its subsidiaries;

(3) One or more employees or directors of the first company or any of its subsidiaries serves as a senior management official of the second company or any of its subsidiaries; or

(4) The first company or any of its subsidiaries enters into transactions or has business relationships with the second company or any of its subsidiaries that generate in the aggregate 2 percent or more of the total annual revenues or expenses of the first company or the second company, each on a consolidated basis.

(g) *Accounting consolidation.* The first company consolidates the second company on its financial statements prepared under U.S. generally accepted accounting principles.

(h) *Control of an investment fund.* (1) The first company serves as an investment adviser to the second company, the second company is an investment fund, and the first company, directly or indirectly, or acting through one or more other persons:

(i) Controls 5 percent or more of the outstanding securities of any class of voting securities of the second company; or

(ii) Controls twenty-five percent or more of the total equity of the second company.

(2) The presumption of control in paragraph (h)(1) of this section does not apply if the first company organized and sponsored the second company within the preceding twelve months.

(i) *Divestiture of control.* (1) The first company controlled the second

company under paragraph (e)(1) or (2) of § 238.2 of this part at any time during the prior two years and the first company controls 15 percent or more of any class of voting securities of the second company.

(2) Notwithstanding paragraph (i)(1) of this section, a first company will not be presumed to control a second company under this paragraph if 50 percent or more of the outstanding securities of each class of voting securities of the second company is controlled by a person that is not a senior management official or director of the first company, or by a company that is not an affiliate of the first company.

(j) *Registered investment company.* The presumptions of control in this section do not apply if:

(1) The second company is an investment company registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*);

(2) The business relationships between the first company and the second company are limited to investment advisory, custodian, transfer agent, registrar, administrative, distributor, and securities brokerage services provided by the first company to the second company;

(3) Director representatives of the first company or any of its subsidiaries comprise 25 percent or less of the board of directors or trustees of the second company; and

(4) (i) The first company controls less than 5 percent of the outstanding securities of each class of voting securities of the second company and less than 25 percent of the total equity of the second company, or

(ii) The first company organized and sponsored the second company within the preceding 12 months.

(k) *Shares held in a fiduciary capacity.* The presumptions of control in this section do not apply to the extent that the first company or any of its subsidiaries control the securities of the second company or any of its subsidiaries in a fiduciary capacity without sole discretionary authority to exercise the voting rights.

■ 13. Section 238.23 is added to read as follows:

§ 238.23 Rebuttable presumption of noncontrol of a company.

(a) In any proceeding under § 238.21(b)(2) or (c) of this part, a first company is presumed not to control a second company if:

(1) The first company controls less than 10 percent of the outstanding securities of each class of voting securities of the second company, and;

(2) The first company is not presumed to control the second company under § 238.22 of this part.

(b) In any proceeding under this subpart, or judicial proceeding under the Home Owners' Loan Act, other than a proceeding in which the Board has made a preliminary determination that a first company has the power to exercise a controlling influence over the management or policies of a second company, a first company may not be held to have had control over a second company at any given time, unless the first company, at the time in question, controlled 5 percent or more of the outstanding securities of any class of voting securities of the second company, or had already been found to have control on the basis of the existence of a controlling influence relationship.

■ 14. Section 238.24 is added to read as follows:

§ 238.24 Total Equity.

(a) *General.* For purposes of this subpart, the total equity controlled by a first company in a second company that is organized as a stock corporation and prepares financial statements pursuant to U.S. generally accepted accounting principles is calculated as described in paragraph (b) of this section. With respect to a second company that is not organized as a stock corporation or that does not prepare financial statements pursuant to U.S. generally accepted accounting principles, the first company's total equity in the second company will be calculated so as to be reasonably consistent with the methodology described in paragraph (b) of this section, while taking into account the legal form of the second company and the accounting system used by the second company to prepare financial statements.

(b) *Calculation of total equity.* (1) *Total Equity.* The first company's total equity in the second company, expressed as a percentage, is equal to:

(i) The sum of Investor Common Equity and, for each class of preferred stock issued by the second company, Investor Preferred Equity, divided by

(ii) Issuer Shareholders' Equity.

(2) *Investor Common Equity* equals the greater of:

(i) Zero, and

(ii) The quotient of the number of shares of common stock of the second company that are controlled by the first company divided by the total number of shares of common stock of the second company that are issued and outstanding, multiplied by the amount of shareholders' equity of the second company not allocated to preferred stock under U.S. generally accepted accounting principles.[96]

(3) *Investor Preferred Equity* equals, for each class of preferred stock issued by the second company, the greater of:

(i) Zero, and

(ii) The quotient of the number of shares of the class of preferred stock of the second company that are controlled by the first company divided by the total number of shares of the class of preferred stock that are issued and outstanding, multiplied by the amount of shareholders' equity of the second company allocated to the class of preferred stock under U.S. generally accepted accounting principles.

(c) *Consideration of debt instruments and other interests in total equity.* (1) For purposes of the total equity calculation in paragraph (b) of this section, a debt instrument or other interest issued by the second company that is held by the first company may be treated as an equity instrument if that debt instrument or other interest is functionally equivalent to equity.

(2) For purposes of paragraph (b)(1) of this section, the principal amount of all debt instruments and the market value of all other interests that are functionally equivalent to equity that are owned or controlled by the first company are added to the sum under paragraph (b)(1)(i) of this section, and the principal amount of all debt instruments and the market value of all other interests that are functionally equivalent to equity that are outstanding are added to Issuer Shareholders' Equity.

(3) For purposes of paragraph (b)(1) of this section, a debt instrument issued by the second company may be considered functionally equivalent to equity if it has equity-like characteristics, such as:

(i) Extremely long-dated maturity;

(ii) Subordination to other debt instruments issued by the second company;

(ii) Qualification as regulatory capital under any regulatory capital rules applicable to the second company;

(iii) Qualification as equity under applicable tax law;

(iv) Qualification as equity under U.S. generally accepted accounting principles or other applicable accounting standards;

[96] If the second company has multiple classes of common stock outstanding and different classes of common stock have different economic interests in the second company on a per share basis, the number of shares of common stock must be adjusted for purposes of this calculation so that each share of common stock has the same economic interest in the second company.

(v) Inadequacy of the equity capital underlying the debt at the time of the issuance of the debt; and

(vi) Issuance not on market terms.

(4) For purposes of paragraph (b)(1) of this section, an interest that is not a debt instrument issued by the second company may be considered functionally equivalent to equity if it has equity-like characteristics, such as entitling its owner to a share of the profits of the second company.

(d) *Investments in parent companies of a second company.* If a first company controls equity interests of one or more companies that directly or indirectly control the second company (parent company), the total equity of the first company in the second company is equal to:

(1) The first company's total equity of the second company as calculated under paragraph (b) of this section, plus

(2) The product of the first company's total equity of each parent company, calculated in accordance with paragraph (b) of this section, multiplied by the parent company's total equity in the second company, as calculated under paragraph (b) of this section.

(e) *Frequency of total equity calculation.* The total equity of a first company in a second company is calculated each time the first company acquires control over or ceases to control equity instruments of the second company, including any debt instruments or other interests that are functionally equivalent to equity in accordance with paragraph (c) of this section.

By order of the Board of Governors of the Federal Reserve System, May 2, 2019.

Ann Misback,

Secretary of the Board.

[FR Doc. 2019–09415 Filed 5–13–19; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL REGISTER

Vol. 84 Tuesday,
No. 93 May 14, 2019

Part V

Department of Veterans Affairs

38 CFR Part 17
Veterans Care Agreements; Interim Final Rule

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AQ45

Veterans Care Agreements

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: The Department of Veterans Affairs (VA) amends its medical regulations to implement its authority to furnish necessary care to covered individuals through certain agreements. Section 102 of the John S. McCain III, Daniel K. Akaka, and Samuel R. Johnson VA Maintaining Internal Systems and Strengthening Integrated Outside Networks Act of 2018 authorizes VA to enter into agreements to furnish required care and services when such care and services are not feasibly available to certain individuals through a VA facility, a contract, or a sharing agreement. This interim final rule establishes the parameters of those agreements, to include: Establishing a certification process for providers who will furnish such care or services; establishing a methodology by which rates will be calculated for payment of care or services under an agreement; and establishing an administrative process for adjudicating disputes arising under or related to such agreements, including those pertaining to claims for payment for care or services provided under an agreement.

DATES: *Effective date:* This rule is effective on May 14, 2019.

Comment date: Comments must be received on or before July 15, 2019.

ADDRESSES: Written comments may be submitted by email through *http://www.regulations.gov;* by mail or hand-delivery to Director, Office of Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW, Room 1064, Washington, DC 20420; or by fax to (202) 273–9026. (This is not a toll-free number.) Comments should indicate that they are submitted in response to ''RIN 2900–AQ45, Veterans Care Agreements.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1064, between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joseph Duran, Office of Community Care (10D), Veterans Health Administration, Department of Veterans Affairs, Ptarmigan at Cherry Creek, Denver, CO, 80209; *Joseph.Duran2@va.gov,* (303) 372–4629. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The John S. McCain III, Daniel K. Akaka, and Samuel R. Johnson VA Maintaining Internal Systems and Strengthening Integrated Outside Networks Act of 2018 (hereafter referred to as the ''MISSION Act'') includes five titles containing more than 60 substantive provisions, many of which amend existing law or create new law that affects the way VA furnishes necessary care and services to covered individuals. This interim final rule will implement section 102 of the MISSION Act, which creates a new 38 U.S.C. 1703A to authorize VA to enter into agreements to furnish required care and services when such care and services are not feasibly available through a VA facility, a contract, or a sharing agreement. This interim final rule establishes the parameters of those agreements, to include establishing a certification process for providers who will furnish such care or services; establishing a methodology by which rates will be calculated for payment of care or services under an agreement; and establishing an administrative process for adjudicating disputes arising under or related to such agreements, including those pertaining to claims for payment for care or services provided under an agreement. Section 1703A(k) requires VA to promulgate regulations to carry out section 1703A.

This interim final rule will not implement section 101 of the MISSION Act, which creates a new VA Community Care Program to furnish care to eligible veterans through non-VA providers. The VA Community Care Program will be implemented in a separate rulemaking (2900–AQ46), however, we provide here a brief explanation regarding the need to implement the agreements authorized by section 1703A ahead of the community care program itself. In accordance with section 101(c)(1) of the MISSION Act, VA is required to promulgate regulations to carry out Veterans Community Care Program by June 6, 2019. Concurrent with this statutory deadline, section 143 of the MISSION Act amended section 101(p) of the Veterans Access, Choice, and Accountability Act of 2014 (the Choice Act) to state that VA may not use the Choice Act to furnish care and services after June 6, 2019. As a result, after June 6, 2019, VA will no longer be able to use Veterans Choice Program provider agreements. The agreements authorized by this rulemaking will essentially replace the Veterans Choice Program provider agreements as a method for purchasing community care through instruments other than conventional procurement contracts that are subject to the Federal Acquisition Regulation (FAR) and all other Federal procurement laws. VA needs the regulations governing these new agreements to be legally effective before June 6, 2019, so that VA has time to establish new purchasing relationships with community providers, because VA's contractual network of community providers as required by the new section 1703(h), as amended by section 101(a) of the MISSION Act, may not be at full coverage by June 6, 2019. Additionally, in VA's experience, certain care and services (such as home health services) have been procured from sources that are unwilling, or unable, to enter into conventional procurement contracts subject to the FAR, and VA expects this will continue to be true after June 6, 2019. If the agreements that will be promulgated by this rulemaking are not in effect with enough time to provide VA and community providers an opportunity to transition away from the current Veterans Choice Program provider agreements before June 6, 2019, there is risk of disruptions to veterans receiving community care (see the section that discusses the Administrative Procedure Act for more specific information regarding disruption to care). To ensure the transition from the current Veterans Choice Program to the Veterans Community Care Program occurs without such disruption, VA requires this interim final rule to establish the parameters of agreements and other related authorities so that VA may legally order care and services under them by June 6, 2019.

§ 17.4100 Definitions

Section 17.4100 will establish definitions for §§ 17.4100–17.4135, which are promulgated to implement the agreements authorized by 38 U.S.C. 1703A.

The term covered individual is defined to mean an individual who is eligible to receive hospital care, medical services, or extended care services from a non-VA provider under title 38 U.S.C. and title 38 CFR. This definition is consistent with the definition of covered individual in section 1703A(l) and will be used throughout §§ 17.4100–17.4135 to indicate who may be furnished care

or services under a Veterans Care Agreement (VCA). This definition further clarifies that the covered individual must separately be eligible under laws administered by VA to receive care from a non-VA provider. Section 1703A is strictly an authority related to how VA may purchase care and services in the community; it does not establish eligibility to receive such care or services from a non-VA provider at VA expense. Such authority must exist elsewhere in title 38 U.S.C. (*e.g.,* 38 U.S.C. 1703). The definition of covered individual in § 17.4100 further references ''title 38 CFR,'' to ensure any implementing regulatory criteria related to the receipt of care or services from non-VA providers at VA expense also apply (more specific applicable regulatory criteria in title 38 CFR will not be cited, as such references may not be exhaustive or accurate should VA revise its regulations in the future).

The term contract is defined to mean any of the following: Federal procurement agreements regulated by the Federal Acquisition Regulation; common law contracts; other transactions; or any other instrument. However, Veterans Care Agreements are expressly excluded from the definition. This definition relates to the assessment by VA in § 17.4115 of whether care and services are feasibly available from a VA facility or through a contract or sharing agreement.

Extended care services is defined as the services described in 38 U.S.C. 1710B(a); this definition of ''extended care services'' is sufficiently broad to capture all extended care services offered by VA.

The terms hospital care and medical services are similarly defined by cross reference to the applicable statutory definitions at 38 U.S.C. 1701(5) and (6), respectively, to sufficiently capture those types of care furnished by VA.

The term sharing agreement is defined to mean an agreement, under statutory authority other than 38 U.S.C. 1703A, by which VA can obtain hospital care, medical services, or extended care services for a covered individual.

The term VA facility is defined to mean a point of VA care where covered individuals can receive hospital care, medical services, or extended care services, to include a VA medical center, a VA community-based outpatient clinic, a VA health care center, a VA community living center, an VA independent outpatient clinic, and other VA outpatient services sites. This definition relates to the assessment by VA in § 17.4115 of whether care and services are feasibly available from a VA facility or through a contract or sharing agreement. We have defined this term in accordance with the types of care and services that a VA facility provides, and we have provided a non-exhaustive list of examples of designations of such facilities (*e.g.,* VA medical center, VA community-based outpatient clinic, etc.) to ensure that any future changes to descriptions or designations of VA facilities would not result in a gap in our regulations.

The term Veterans Care Agreement is defined to mean an agreement authorized by 38 U.S.C. 1703A. We note that we are using the term veterans care agreement, although individuals other than veterans may receive care under an agreement authorized by section 1703A (*see* the definition of covered individual). We additionally note that, throughout the remainder of the preamble, we may refer more simply to agreement rather than veterans care agreement.

§ 17.4105 Purpose and Scope

Section 17.4105 will establish purpose and scope paragraphs. The purpose in paragraph (a) will state that §§ 17.4100–17.4135 implement 38 U.S.C. 1703A, as required under section 1703A(j). Paragraph (a) will further state that section 1703A authorizes VA to enter into and utilize Veterans Care Agreements to furnish hospital care, medical services, and extended care services to a covered individual when such individual is eligible for and requires such care or services that are not feasibly available to the covered individual through a VA facility, a contract, or a sharing agreement.

The scope in paragraph (b) will state that §§ 17.4100–17.4135 contain procedures, requirements, obligations, and limitations for: The process of certifying entities or providers under 38 U.S.C. 1703A; entering into, administering, furnishing care or services pursuant to, and discontinuing Veterans Care Agreements; and all disputes arising under or related to Veterans Care Agreements. Paragraph (b) will further state that §§ 17.4100 through 17.4135 apply to all entities and providers, where applicable, that are parties to a Veterans Care Agreement, participate in the certification process, and/or furnish hospital care, medical services, or extended care services pursuant to a Veterans Care Agreement.

§ 17.4110 Entity or Provider Certification

Section 17.4110 will implement the certification process required by 38 U.S.C. 1703A(c), by establishing the standards and process VA will use to certify entities or providers that are interested in entering into agreements with VA and furnishing care and services through such agreements. Generally, section 1703A(c) requires VA to establish procedures for application for certification, criteria to approve or deny certification and recertification, and criteria to revoke certification.

Paragraph (a) of § 17.4110 will establish the general requirement that to be eligible to enter into a Veterans Care Agreement, an entity or provider must be certified by VA in accordance with the process and criteria established in paragraph (b) of § 17.4110. Paragraph (a) will also establish that an entity or provider must be actively certified while furnishing hospital care, medical services, or extended care services pursuant to a Veterans Care Agreement that the entity or provider has entered into with VA. We believe this meets the intent of section 1703A(c), to ensure that entities or providers must meet and maintain VA's certification requirements to be considered eligible to furnish care or services under a Veterans Care Agreement.

Paragraph (b) of § 17.4110 will establish the process and criteria for entity and provider certification. Paragraph (b)(1) will establish that an entity or provider must apply for certification, by submitting the following information to VA: (i) Documentation of applicable medical licenses, and (ii) all other information and documentation that is required by VA. This additional information may include (but is not limited to): A provider's first and last names; legal business names, National Provider Number (NPI), NPI type, provider identifier type (*e.g.* individual or group practice), tax identification number, specialty (taxonomy code), business address, billing address, phone number, and care site address. We interpret section 1703A(c) as requiring an application for certification (as section 1703A(c)(1) requires VA to establish through regulation a timeframe by which VA must act upon such application), and we are implementing that requirement by establishing that application occurs with the entity or provider submitting information as required by VA in § 17.4010(b)(1)(i)–(ii). This information is what VA presently requires providers to submit to be considered eligible to provide community care under Choice Provider Agreements, and we believe providers are familiar with this information. Although providers who will furnish services through a VCA will be familiar with submitting this information, the information collection burden will not be grandfathered from the Choice

Provider Agreements to the VCA program, because the certification process required by section 1703A(c) is new and therefore will be accounted for as a new information collection as described later in this rule. Because this collection is supporting a new statutory process VA must account for it as a new collection, which will include submission by providers of all new information.

Paragraph (b)(2) of § 17.4110 will establish the process and criteria for approval or denial of an application for certification, as required by section 1703A(c)(2). Paragraph (b)(2)(i) will first establish that VA will review all information it obtains including through applicable federal and state records systems and as submitted by the applicant, and will determine eligibility for certification. These federal and state records systems would be those that VA accesses presently to conduct its certification processes for providers. Paragraph (b)(2)(ii) will then establish that an applicant must submit all information required under paragraph (b)(1) of this section. VA will then review all applicable documentation received to determine whether all requirements are met.

Paragraph (b)(2)(iii) of § 17.4110 will establish the first mandatory basis for denial of certification, which is established in section 1703A(c), whereby VA must deny an application for certification if VA determines that the entity or provider is excluded from participating in a Federal health care program, or is identified as an excluded source on the System for Award Management Exclusions list. This mandatory denial is consistent with section 1703A(c)(3).

The second mandatory basis for denial of certification that VA is establishing is under § 17.4110(b)(2)(iv), whereby VA will deny an application for certification if VA determines that the applicant is already barred from furnishing hospital care, medical services, and extended care services under chapter 17 of title 38, U.S.C., because VA has previously determined the applicant submitted to VA a fraudulent claim, as that term is defined in 38 U.S.C. 1703D(i)(4), for payment for hospital care, medical services, or extended care services. We believe this basis of denial is reasonable and consistent with the purposes of section 1703A(c) because it would allow VA to deny an application based on a separate, previous determination by VA that the applicant is barred from furnishing care and services due to submitting a fraudulent claim.

Paragraph (b)(2)(v) of § 17.4110, establishes a discretionary standard that would allow VA to deny an application for certification if VA determines that, based on programmatic considerations, VA is unlikely to enter into a Veterans Care Agreement with the applicant. We believe this basis of denial is reasonable because section 1703A is a permissive procurement authority that allows (but does not require) VA to enter into and use Veterans Care Agreements. Therefore, there is little or no benefit to a provider or entity, or to VA, from proceeding with the certification process in section 1703A(c), including obtaining and monitoring certified status, when VA, in the exercise of its programmatic judgment, determines it is unlikely to enter into a VCA with the entity or provider. Under those circumstances, in order to avoid unnecessary expenditure of resources by the entity or provider, and by VA, VA may deny the application. VA's determination that the basis of denial in § 17.4110(b)(2)(v) has been met will be assessed on a case by case basis. We will not regulate more specific circumstances under which VA might apply this basis of denial, although such circumstances would generally exist when VA would not likely enter into a VCA with an entity or provider because the care or services required by a covered individual are instead feasibly available through a VA facility, a contract, or a sharing agreement (*see* 38 U.S.C. 1703A(a)(1)). For instance, if an entity or provider were already a participant in VA's contractual community care network, or if VA's contractual community care network in a certain locality already had adequate coverage of the services the entity or provider furnishes, VA would be unlikely to seek to enter into a VCA with that entity or provider.

As required by section 1703A(c)(1), § 17.4110(b)(2)(vi) will establish a deadline for VA to act on an application for certification, to require that within 120 days of VA receiving an application, VA will issue a written decision approving or denying certification, if practicable. We believe 120 days is a reasonable amount of time to make such a determination, and we include the if practicable language only to provide for limited exceptions where the 120 days may not be met (for instance, if a very large quantity of applications is received by VA at the same time or within a short timeframe). Section 17.4110(b)(2)(vi) will further establish that notices of approval will set forth the effective date and duration of the certification, while notices of denial will set forth the specific grounds for denial and supporting evidence. We believe this will provide entities and providers adequate notice of their relative certification status. Lastly, § 17.4110(b)(2)(vi) will establish that a denial constitutes VA's final decision on an application.

Paragraph (b)(3) of § 17.4110 will establish the duration of the certification, in accordance with the requirement to regulate such duration in section 1703A(c)(2). Paragraph (b)(3)(i) will provide that an entity or provider's certification will last for a three-year period, unless VA revokes such certification within that period under the standards established in § 17.4110(b)(4) (this revocation is discussed further below). This three-year certification period is reasonable for VA to administer and should not create any undue burden for entities or providers. Paragraph (b)(3)(ii) of § 17.4110 will further establish that an entity or provider must maintain certification throughout the three-year period and must inform VA of any changes or events that would affect its eligibility within 30 calendar days of the change or event. We believe this maintenance of certification is consistent with the intent of section 1703A(c).

Paragraph (b)(3)(iii) of § 17.4110 will establish that a certified entity or provider seeking certification after the end of its current three-year certification must apply for recertification at least 60 calendar days prior to the expiration of its current certification; otherwise, the procedures set forth in paragraph (b)(3)(iv) of § 17.4110 will apply. Upon application for recertification by the entity or provider, including submitting any new or updated information within the scope of paragraph (b)(1) of § 17.4110 that VA requests in conjunction with such application for recertification, VA will reassess the entity or provider under the criteria in paragraph (b)(2) of § 17.4110. VA will issue a decision approving or denying the application for recertification within 60 calendar days of receiving the application, if practicable. Notice of the decision will be furnished to the applicant in writing. Notices of recertification will set forth the effective date and duration of the certification. Notices of denial will set forth the specific grounds for denial and supporting evidence. A denial constitutes VA's final decision on the application for recertification. We believe the processes established in § 17.4105(b)(3)(iii) provide an entity or provider with adequate notice to begin and complete the process of

recertification, as well as notice that VA will assess for recertification under the criteria established in § 17.4110(b)(2), as VA is required to regulate recertification under section 1703A(c)(2). As with initial certification, we find that written notice is adequate to communicate to entities and providers their relative recertification status, and that VA's denial notice for recertification constitutes VA's final decision on application for recertification. Paragraph (b)(3)(iv) of § 17.4110 will lastly establish that if a certified entity or provider applies for recertification after the deadline in paragraph (b)(3)(iii) of § 17.4110 (fewer than 60 days prior to their three-year period lapsing), such application will constitute a new application for certification and will be processed in accordance with paragraphs (b)(1)–(2) of § 17.4110.

Paragraph (b)(4) of § 17.4110 will establish the process for revocation of certification, in accordance with the requirement to regulate such revocation in section 1703A(c)(2). Paragraph (b)(4)(i) will establish that VA may revoke an entity's or provider's certification in accordance with § 17.4010(b)(2)(ii)–(v). Paragraph (b)(4)(ii) will establish that when VA determines revocation is appropriate, VA will notify the entity or provider in writing of the proposed revocation. The notice of revocation will set forth the specific grounds for the action and will notify the entity or provider that it has 30 calendar days from the date of issuance to submit a written response addressing either of the following: (A) Documenting compliance and proving any grounds false, or (B) providing information and documentation that demonstrates the entity or provider has, subsequent to the notice of proposed revocation, achieved compliance with all criteria for certification set forth in § 17.4110(b)(2). Paragraph (b)(4)(iii) will establish that following the 30-day response period, VA will consider any information and documentation submitted by the entity or provider and will, within 30 calendar days, determine whether revocation is warranted. If VA determines that revocation is not warranted, VA will notify the entity or provider of that determination in writing. If VA determines that revocation is warranted, the entity or provider will immediately lose certified status, and VA will issue a notice of revocation to the entity or provider. Notices of revocation will set forth the specific facts and grounds for, and the effective date of, such revocation. A notice of revocation constitutes VA's final decision. Lastly, paragraph (b)(4)(iv) will establish that revocation of certification results in such status being rendered void, and the provider or entity may not furnish services or care under a VCA prior to applying for and obtaining certified VCA status.

We believe that the processes established in § 17.4110(b)(4) provide adequate notice in both timeframes and format to providers and entities of VA's decision to revoke to then permit providers and entities with an opportunity to respond and potentially remediate circumstances that could result in VA not revoking certification. As with approvals of initial certification or recertification, VA's decision to revoke certification will constitute VA's final decision.

§ 17.4115 VA Use of Veterans Care Agreements

Section 17.4115 will establish basic parameters regarding the use of agreements. Paragraph (a)(1) of § 17.4115 will establish that VA may furnish hospital care, medical services, or extended care services through a VCA only if such care or services are furnished to a covered individual who is eligible for such care or services under 38 U.S.C. chapter 17 and requires such care or services. The requirement in § 17.4115(a)(1) that individuals be eligible for care or services is consistent with section 1703A(a)(1)(A). Paragraph (a)(2) of § 17.4115 will restate the general requirement in section 1703A(a)(1)(A) that VA may use agreements to furnish care or services only if such care or services are not feasibly available to the covered individual through a VA facility, contract, or a sharing agreement. Paragraph (a) of § 17.4115 essentially restates language from section 1703A(a), but modifies it to include that agreements may ''only'' be considered for use after considering those other means of furnishing care and services. We believe this reflects the clear intent of section 1703A(a), which only authorizes VA to use agreements to purchase care in the community when such care is not feasibly available from a VA facility or through a contract or sharing agreement. Paragraph (a)(2) of § 17.4115 will also include the express qualifying language from section 1703A(a)(1)(C) that VA may consider the medical condition of the individual, the travel involved, the nature of the care or services, or a combination of these factors when determining if the furnishing of care and services through a contract or sharing agreement would be impracticable or inadvisable, thereby warranting use of an agreement instead.

Paragraph (b) of § 17.4115 will establish standards of conduct, as well as indicate improper business practices, for VA officials and for entities and providers. We note that we will not be restating the regulatory text verbatim below to explain its inclusion in regulations, to avoid unnecessary duplication and because such regulation text is predominantly self-explanatory. Paragraph (b)(1)(i) of § 17.4115 will establish general parameters that Government business shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none. Paragraph (b)(1)(ii) of § 17.4115 will memorialize that certain other statutes and regulations address prohibited conduct for VA officials and employees. Examples of such authorities are identified in paragraphs (b)(1)(ii)(A)–(D). Paragraph (b)(2) of § 17.4115 will establish more specific standards and requirements for entities and providers that enter into Veterans Care Agreements, to require such an entity or provider to: (i) Have a satisfactory performance record; (ii) have a satisfactory record of integrity and business ethics; (iii) notify VA within 30 calendar days of the existence of an indictment, charge, conviction, or civil judgment, or Federal tax delinquency in an amount that exceeds $3,500; (iv) not engage in a fraudulent or criminal activity or offense (such prohibited activities or offenses are more specifically listed in the regulation text under § 17.4115(b)(2)(iv)); and (v) not submit to VA a fraudulent claim, as that term is defined in 38 U.S.C. 1703D(i)(4), for payment for hospital care, medical services, or extended care services.

§ 17.4120 Payment Rates

Section 17.4120 will establish that the rate structure for payment for hospital care, medical services, and extended care services furnished pursuant to an agreement authorized by section 1703A of this title will be the rates set forth in the terms of such agreement. Each such agreement will contain price terms for all services within its scope. Payment rates will comply with the parameters defined in § 17.4120(a)–(e), as described below. To be consistent with section 1703A(d), payment rates will be analogous to the parameters established in section 1703(i) as amended by section 101 of the MISSION Act. For the sake of convenience and understanding, we refer to provisions of section 1703, as section 101 of the MISSION Act will amend it, although we recognize that section 1703 as so amended is not

legally effective until VA has published a final rule implementing the Veterans Community Care Program (the proposed rule RIN 2900–AQ46, Veterans Community Care Program, was published on February 22, 2019, see 84 FR 5629). Until section 1703(i) as amended is effective, VA exercises its general authority in this interim final rule to establish the rates paid for care and services provided through an agreement, and such rates will be consistent with section 1703(i) when it comes into effect.

Paragraph (a) of § 17.4120 will establish that, except as otherwise provided in § 17.4120, payment rates will not exceed the applicable Medicare fee schedule or prospective payment system amount (hereafter referred to as ''Medicare rate''), if any, for the period in which the service was provided (without any changes based on the subsequent development of information under Medicare authorities). This will be analogous to the general provision in section 1703(i)(1), that, with certain exceptions, the rates paid for care and services may not exceed the applicable Medicare rate. The parenthetical language in § 17.4120(a), to indicate that VA's rates would be based on Medicare rates without any changes based on the subsequent development of information under Medicare authorities, is intended to limit VA's rate adjustments to an annual basis in line with Medicare's annual payment update, versus other adjustments that Medicare may make to its rates throughout any given year that is typically provider-specific and is based on provider and other reporting.

Paragraph (b) of § 17.4120 will establish that, with respect to services furnished in a State with an All-Payer Model Agreement under section 1814(b)(3) of the Social Security Act (42 U.S.C. 1395f(b)(3)) that became effective on or after January 1, 2014, the Medicare rate under paragraph (a) will be calculated based on the payment rates under such agreement. This is consistent with section 1703(i)(4).

Paragraph (c) of § 17.4120 will establish that payment rates for services furnished in a highly rural area may exceed the limitations set forth in § 17.4120(a)–(b). VA will use the authority in section 1703(i)(1) to establish rates for highly rural areas, versus the authority in section 1703(i)(2)A. Section 17.4120(c) will further establish that the term ''highly rural area'' means an area located in a county that has fewer than seven individuals residing in that county per square mile, consistent with the definition of ''highly rural area'' in section 1703(i)(2)(B). Section 17.4120(c) will reflect VA's interpretation that imposing the limitations set forth in § 17.4120(a)–(b) may not be practicable for all services furnished in highly rural areas. VA's assessment of practicability in § 17.4120(c) is consistent with the authority in section 1703(i)(1), which expressly provides that the payment limitations of that section only apply ''to the extent practicable.'' VA may find that it is not practicable to impose the payment limitations in § 17.4120(a)–(b) for services furnished in highly rural areas primarily because the typical laws of supply and demand dictate that in highly rural areas, the scarcity of health care providers and other health care resources tends to create increased prices for delivery of health care services. VA will not implement the more express statutory payment exception in section 1703(i)(2)(A) for services furnished to individuals residing in highly rural areas, because it would not be practicable to tie payment rates to the location of a patient's residence as set forth in section 1703(i)(2)(A). We reiterate from above that a driver of increased cost of services in highly rural areas relates to the location where the services are provided, not necessarily to the location from which the patient travels to receive the services. Indeed, it may not be accurate that, in all cases, individuals who reside in highly rural areas are receiving care and services in those same areas. Accordingly, VA does not want to adopt a payment methodology that relies on the authority in section 1703(i)(2)(A), as that that can universally permit payment of higher rates to certain health care providers furnishing services in other than highly rural areas. Attempting to tie payment rates to particular patients, rather than setting general rates for particular health care providers, would be administratively cumbersome and could lead to selective acceptance of patients that would adversely affect other patients. Using the authority in section 1703(i)(1) to establish rates for highly rural areas, versus the authority in section 1703(i)(2)A), provides for more consistent and fair rate setting for these areas.

Paragraph (d) of § 17.4120 will establish that VA may deviate from the parameters set forth in § 17.4120(a)–(c) when VA determines that, based on patient needs, market analyses, health care provider qualifications, or other factors, it is not practicable to limit payments as will be dictated by application of § 17.4120(a)–(c). This general exception will be consistent with the provision in section 1703(i)(1) that authorizes VA to pay at rates not to exceed the Medicare rate ''to the extent practicable.'' Paragraph (d) will afford VA the flexibility to ensure it can reach agreement with entities or providers to furnish necessary services when factors that drive costs may shift faster than established Medicare rates. This flexibility will not be a guarantee of payments above applicable Medicare rates because the introductory language in § 17.4120 will establish that payment rates are ultimately set forth in the terms of the agreement under which the care and services are furnished. Such agreements will provide for the relevant procedures and review process for any payments that might utilize the exception in § 17.4120(d), to ensure a consistent level of VA oversight.

Finally, paragraph (e) of § 17.4120 will establish, consistent with section 1703(i)(3), that payment rates for services furnished in Alaska will not be subject to paragraphs (a) through (d).

§ 17.4125 Review of Veterans Care Agreements

Section 17.4125 will establish basic parameters for VA to review certain agreements that have been formed to determine if care and services should be furnished through a contract or sharing agreement instead, in accordance with the requirements in 38 U.S.C. 1703A(a)(2) and (a)(3). Under § 17.4125, VA will periodically review each Veterans Care Agreement that exceeds $5,000,000 annually), to determine if it is feasible and advisable to furnish the hospital care, medical services, and extended care services that VA has furnished or anticipates furnishing under such Veterans Care Agreements through a VA facility, contract, or sharing agreement instead. If VA determines it is feasible and advisable to provide any such hospital care, medical services, or extended care services in a VA facility or by contract or sharing agreement, it will take action to do so. The $5,000,000 amount is established in section 1703A(a)(3) for extended care services, and we believe that amount is reasonable to consider for agreements for hospital care and medical services as well.

§ 17.4130 Discontinuation of Veterans Care Agreements

Section 17.4130 will establish parameters for the discontinuation of agreements, consistent with 38 U.S.C. 1703A(f). Paragraph (a) of § 17.4130 will establish that discontinuation of an agreement by an entity or provider requires a written notice of request to discontinue to be submitted to VA, in accordance with the terms of the VCA

and additional terms as established in § 17.4130(a)(1) and (a)(2). Paragraph (a)(1) will establish that the written notice must be received by VA at least 45 calendar days before the intended discontinuation date and must specify the discontinuation date, and paragraph (a)(2) will state that the notice must be delivered to the designated VA official to which such notice must be submitted under the terms of the Veterans Care Agreement and in accordance with the terms of the Veterans Care Agreement. Paragraphs (a)(1)–(2) will implement section 1703A(f)(1), which requires VA to establish, through regulations, time and notice requirements for an entity or provider to discontinue an agreement. The 45-day notice requirement in advance of discontinuation under § 17.4130(a)(1) is consistent with the discontinuation notice in current Choice Program provider agreements and is familiar to entities and providers, and otherwise necessary to ensure continuity of care should VA need to secure other health care resources prior to an agreement being discontinued.

Paragraph (b)(1) of § 17.4130 will establish the parameters under which VA may discontinue an agreement with an entity or provider, to require a written notice of discontinuation to be submitted by VA to the entity or provider, in accordance with the terms of the VCA and additional terms as established in paragraphs (b)(1)(i) and (b)(1)(ii). Paragraph (b)(1)(i) will establish that the written notice will be issued by VA at least 45 calendar days before the intended discontinuation date except as provided in paragraph (b)(1)(ii). Paragraph (b)(1)(ii) will establish that notice may be issued fewer than 45 calendar days before the discontinuation date, including notice that is effective immediately upon issuance, when VA determines such abbreviated or immediate notice is necessary to protect the health of covered individuals or when such abbreviated or immediate notice is permitted under the terms of the Veterans Care Agreement. Paragraph (b)(1)(ii) of § 17.4130 would provide for fewer than 45 days' notice prior to discontinuation in certain circumstances, for two reasons. First, VA must be able to discontinue an agreement without advance notice in circumstances where doing so is necessary to protect the health of covered individuals. Second, VA wants to retain the right to discontinue with fewer than 45 days' notice under other circumstances if the parties to an agreement negotiate terms permitting such an approach. Paragraph (b)(2) of § 17.4130 will establish that the written notice will be delivered to the entity or provider in accordance with the terms of the Veterans Care Agreement.

Paragraph (b)(3) of § 17.4130 will provide that VA may discontinue an agreement for any reason that is expressly enumerated in section 1703A(f)(2). These reasons are: (i) If the entity or provider fails to comply substantially with the provisions of 38 U.S.C. 1703A or 38 CFR 17.4100–17.4135; (ii) if the entity or provider fails to comply substantially with a provision of the agreement; (iii) if the entity or provider is excluded from participating in a Federal health care program or is identified on the System for Award Management exclusions list; (iv) if VA ascertains that the entity or provider has been convicted of a felony or other serious offense under Federal or State law and their continued participation would be detrimental to the best interest of the individuals receiving care or of VA; and (v) if VA determines it is reasonable to terminate the agreement based on the health care needs of the individual receiving care or services.

§ 17.4135 Disputes

Section 17.4135 will establish administrative procedures and requirements for eligible entities and providers to present disputes arising under agreements, in accordance with 38 U.S.C. 1703A(h)(1). Paragraph (a) of § 17.4135 will generally establish the parameters of these administrative procedures, consistent with section 1703A(h)(2)–(h)(4). Paragraph (a)(1) will more specifically establish that, for purposes of § 17.4135, a dispute means a disagreement between VA and the entity or provider that entered into the subject Veterans Care Agreement with VA that meets the following criteria: (i) Pertains to one of the subject matters set forth in § 17.4135(b) (which, as explained later, are limited to claims for payment or scope of authorizations); (ii) is not resolved informally by mutual agreement of the parties; and (iii) culminates in one of the parties demanding or asserting, as a matter of right, the payment of money in a sum certain under the Veterans Care Agreement, the interpretation of the terms of the Veterans Care Agreement or a specific authorization thereunder, or other relief arising under or relating to the Veterans Care Agreement. Paragraph (a)(1)(iii) will also clarify that a dispute does not encompass any demand or assertion, as a matter of right, for penalties or forfeitures prescribed by a statute or regulation that another federal agency is specifically authorized to administer, settle, or determine.

Paragraph (a)(2) of § 17.4135 will establish that the procedures in § 17.4135 should only be used when the parties to a Veterans Care Agreement have failed to resolve an issue in controversy by mutual agreement. This language will reinforce the characterization in § 17.4135(a)(1)(ii) that when the parties to an agreement are working to informally resolve a matter by mutual agreement, those actions and that process do not constitute a dispute within the meaning of this section. In other words, the existence of this disputes process does not preclude the parties to an agreement from working together to mutually resolve any issues arising under or related to the agreement, including issues pertaining to claims for payment, the scope of authorizations, receipt or non-receipt of medical documentation by VA, or simple clerical errors (such as a miscoding of a procedure by an entity or provider).

Paragraph (a)(3) of § 17.4135 will establish that the dispute procedures in § 17.4135 constitute an entity or provider's exclusive administrative remedies for disputes arising under agreements, consistent with section 1703A(h)(2). We interpret section 1703A(h)(2) to shield disputes under agreements from the application of any other administrative remedies that VA may use to adjudicate and/or resolve disputes in other contexts, including application of administrative requirements and procedures under 38 U.S.C. chapter 71 and 38 CFR part 19.

Paragraph (a)(4) of § 17.4135 will provide that disputes under § 17.4135 are not considered claims for purposes of such laws that would otherwise require the application of 41 U.S.C. 7101–7109, also known as the Contract Disputes Act of 1978, which is consistent with 38 U.S.C. 1703A(h)(4).

Paragraph (a)(5) of § 17.4135 will establish that an eligible entity or provider must first exhaust the procedures further established in § 17.4135 before seeking judicial review under 28 U.S.C. 1346, consistent with 38 U.S.C. 1703A(h)(3).

Paragraph (b) of § 17.4135 will provide that disputes arising under agreements may only pertain to: (1) The scope of one or more specific authorizations under the applicable Veterans Care Agreement; or (2) claims for payment under the applicable Veterans Care Agreement. These limitations as to what may be disputed are consistent with section 1703A(h)(4).

Paragraph (c) of § 17.4135 will establish procedures for disputes arising

under agreements, specifically related to initiation and review of the dispute, as well as issuance and effect of VA's decision. Paragraph (c)(1) of § 17.4135 will provide that (i) disputes must be initiated by submitting a notice of dispute, in writing, to the designated VA official to which notice must be submitted under the terms of the Veterans Care Agreement and in accordance with the terms of the Veterans Care Agreement, and (ii) the notice of dispute must contain all specific assertions or demands, all facts pertinent to the dispute, any specific resolutions or relief sought, and all information and documentation necessary to review and adjudicate the dispute. The information in § 17.4135(c)(ii) is what is minimally required by VA to assess the matter in dispute and issue a decision.

Paragraph (c)(1)(iii) of § 17.4135 will establish that the notice of dispute must be received by the designated VA official to which such notice must be submitted under the terms of the Veterans Care Agreement and in accordance with the terms of the Veterans Care Agreement, within 90 calendar days after the accrual of the dispute. For purposes of § 17.4135(c)(1)(iii), the accrual of the dispute is the date when all events, that fix the alleged liability of either VA or the entity or provider and permit the applicable demand(s) and assertion(s), were known or should have been known. We believe 90 days is a reasonable timeframe for entities or providers to submit disputes to VA regarding claims for payment or scope of authorizations (based on VA's experience, we believe entities or providers will seek to resolve any disagreements regarding payment amounts much sooner). To clarify when VA would determine a date certain to start the 90-day timeframe under this accrual of dispute standard, § 17.4135(c)(1)(iii) would further establish that the term accrual of the dispute has the following meanings in each of the two specific circumstances: (A) When a dispute consists of an entity or provider asserting that VA has made payment in an incorrect amount, under circumstances where VA has issued a corresponding payment notice and the entity or provider has received such notice, the accrual of the dispute is the date such notice was received by the entity or provider; and (B) when a dispute consists of an entity or provider asserting that VA has improperly denied payment to which it is entitled, under circumstances where VA has issued a corresponding denial of payment notice and the entity or provider has received such notice, the accrual of the dispute is the date such notice was received by the entity or provider. We believe that these two circumstances will cover a vast majority of disputes, because, under section 1703A(h)(4), disputes must pertain to claims for payment or the scope of authorizations.

Paragraph (c)(2) of § 17.4135 will establish the scope of VA's authority to decide and resolve disputes. Paragraph (c)(2)(i) will establish that a VA official acting within the scope of authority delegated by the Secretary of Veterans Affairs (hereafter referred to in this section as the responsible VA official) will decide and resolve disputes under this section. We believe that it is adequate to reference such a VA official, versus a more specific job title or position, to avoid a gap in our regulations should such titles or positions be renamed or restructured in the future. Paragraph (c)(2)(ii) will establish that the authority to decide or resolve disputes under this section does not extend to the settlement, compromise, payment, or adjustment of any claim for payment that involves fraud or misrepresentation of fact. For purposes of § 17.4135(c)(2)(ii), misrepresentation of fact means a false statement of substantive fact, or any conduct which leads to the belief of a substantive fact material to proper understanding of the matter in hand, made with intent to deceive or mislead. If the responsible VA official encounters evidence of misrepresentation of fact or fraud on the part of the entity or provider, the responsible VA official shall refer the matter to the agency official responsible for investigating fraud and may refer the matter to other federal entities as appropriate.

Paragraph (c)(3) of § 17.4135 will establish procedures related to review of disputes and VA's decision in resolving disputes. Paragraph (c)(3)(i) will establish that upon receipt of a notice of dispute, the responsible VA official will review the dispute and all facts pertinent to the dispute. Paragraph (c)(3)(ii) will further establish that if the responsible VA official determines additional information or documentation is required for review and adjudication of the dispute, the official will, within 90 calendar days of VA's receipt of the notice of dispute, provide written notice to both parties, in accordance with the notice provisions of the Veterans Care Agreement, that additional information or documentation is required for review and adjudication of the dispute. Such notice will identify and request the additional information and documentation deemed necessary to review and adjudicate the dispute.

Paragraph (c)(3)(iii) of § 17.4135 will establish that upon VA receipt of a notice of dispute that conforms to the requirements of § 17.4135(c)(1), the responsible VA official will take one of the following actions within 90 calendar days, either: (A) Issue a written decision, in accordance with the notice provisions of the Veterans Care Agreement, that will include all information further described in § 17.4135(c)(3)(iii)(A)*(1)–(5);* or (B) upon a determination that additional time is required to issue a decision, provide written notice in accordance with the notice provisions of the Veterans Care Agreement of the time within which the decision will be issued. The determination of the appropriate amount of additional time must be reasonable and will take into account the complexity of the dispute and any other relevant factors, and the total time will not exceed 150 calendar days. Under § 17.4135(c)(3)(iii)(B), if additional time is needed, the responsible VA official will subsequently issue a written decision in accordance with paragraph (c)(3)(iii)(A) of this section. Under 38 U.S.C. 1703(A)(h)(4), disputes must pertain to claims for payment or the scope of authorizations. With regards to these timeframes of 90 days and 150 days that will be established in § 17.4134(c)(3) as described above, VA has extensive experience dealing with non-VA providers regarding both payment and scope of authorizations, including resolving discrepancies and disagreements outside of the new process in section 1703(A)(h)(4) regarding amounts of payment, nonpayment, and scope of authorizations. Based on that experience, VA is familiar with the types of information and documentation necessary to resolve these matters, and we have found that we can generally identify all such information and documentation in fewer than 60 days after an issue is first identified. However, to ensure we cover the potential for unforeseen delays that may arise given the more formal nature of this new disputes process (relative to how VA currently resolves similar matters with non-VA community providers) VA has established a 90-day timeframe. We believe 90 days is a prudent timeframe for VA to commit to identifying information and documentation necessary to adjudicate most disputes under this section. Section 17.4135(c)(3) will then further provide for an additional 60 days, for a

total of 150 days, in what we expect to be the rare occurrence when the 90 days would not be sufficient. We determined that the 90 days and 150 days were reasonable by balancing uncertainties that may increase the timeframe for VA to identify information under this process against the interests of providers and entities that enter into VCAs in expeditious processing and resolution of formal disputes under this section.

Paragraph (c)(4) of § 17.4135 will establish that VA will furnish its decision on the dispute to the entity or provider by any method that provides evidence of receipt. Such methods can include electronic means.

Paragraph (c)(5) of § 17.4135 will establish that the written decision issued by the responsible VA official constitutes VA's final decision on the dispute. This language serves to clarify that VA maintains no administrative process to appeal such a decision and to emphasize the reality that, under section 1703A(h)(2), this disputes process constitutes entities' and providers' exhaustive and exclusive administrative remedy.

Administrative Procedure Act

The Secretary of Veterans Affairs finds that there is good cause under 5 U.S.C. 553(b)(B) and (d)(3) to dispense with the opportunity for advance notice and opportunity for public comment and to publish this rule with an immediate effective date. As previously stated in this rulemaking, VA's contractual network of community providers as will be required under section 1703(h), as added by section 101 of the MISSION Act, will not be fully operational by June 6, 2019. Further, section 143 of the MISSION Act amended section 101(p) of the Choice Act to state that VA may not use the Choice Act to furnish care and services after June 6, 2019. As a result, on that date, VA will no longer be able to use Veterans Choice Program provider agreements. If these regulations governing Veterans Care Agreements (VCAs) are not legally effective prior to June 6, 2019, VA will not be able to use such agreements to replace the Choice Program provider agreements. If VA cannot use VCAs to replace Choice Program provider agreements, VA will not be able to: (1) Fill gaps in coverage for the furnishing of general care and services until the contractual network of community providers is fully established, and (2) furnish certain specific care and services that VA does not anticipate being secured through the contractual network of community providers at least in the near future.

Concerning gaps in coverage for general care and services until the contractual network of community providers is fully established, VA has been able to modify some of its current community care contracts for expansion until the new network is fully functional. However, even these expansions have not been able to absorb all existing Choice Program provider agreements that are used within each of the 21 Veterans Integrated Service Networks (VISN) to secure care and services outside of VA's community care contracts. Using data from April 2019, there were over 22,000 Choice Program provider agreements still in place across all VISNs. There is some disparity between VISNs regarding use of Choice Program provider agreements, for instance VISN 8 had 3,809 outstanding Choice Provider Agreements while VISN 17 had only 71.

Although continued efforts under current contract expansions as well as continued development of the new contractual network might be expected to absorb some of this outstanding volume of Choice Program provider agreements, there will be coverage gaps across all VISN areas nationwide if VCAs are not in place by June 6, 2019. VA uses Choice Program provider agreements to purchase a myriad of care and services for veterans in the community, all of which are clinically necessary. If VCAs are not in place to furnish these care and services when the authority for these provider agreements lapses, this care will not be furnished and veterans could be harmed. This would be especially true for treatment of certain diseases such as cancer that require continuous and uninterrupted care and monitoring on an immediate and stringent schedule upon diagnosis. Similarly, the health and safety of individuals receiving mental health treatment would be at risk if continuity of care were not maintained to ensure, for instance, retention of current mental health professionals already providing these services.

In addition to the general gaps in coverage as described above as VA works to expand its contracted network of care, there are specific care and services that are explicitly excluded from VA's current community care contracts that are in place as of the date of publication of this rulemaking (to include the expansions mentioned above) and that will not be covered by the new contracted network immediately after June 6, 2019. These services include unskilled home health services as well as dental care, and these services would simply stop being furnished to affected veterans on June 6, 2019 unless a VCA was in place to furnish them. Based on VA's experience, home health providers that are parties to the Choice Program provider agreements are typically unwilling to enter into a conventional procurement contract subject to the Federal Acquisition Regulation (FAR). For instance, home health care services are typically furnished by small providers serving a limited number of individuals, and it is VA's understanding in dealing with such providers for many years that being subject to Federal contractor obligations dis-incentivizes their participation in VA community care, resulting in the possibility of significant disruptions in the provision of home health care services to VA beneficiaries.

Veterans in receipt of these services represent a vulnerable population because they require assistance to retain their highest level of functioning in the least restrictive environment (their home) as possible, often avoiding a higher level of institutionalized care that is not yet needed by the veteran. Should such home health services stop, then VA could reasonably expect the health conditions of affected veterans to worsen, which could more rapidly necessitate the veteran requiring institutionalized care. For instance, veterans often receive home health aide services to assist them to properly take their prescribed medications. Should these services cease, there would be clear and unavoidable negative health outcomes for these veterans. Because institutionalized care in this type of scenario would be required due to an absence of home health care, and not necessarily due to the veteran's otherwise progressive and actual need for a higher level of service, such institutionalized care would not likely be supporting optimal clinical outcomes and would also be furnished at a much greater cost to VA.

Using dental services as another example, VCAs are needed to ensure there are not lapses in the provision of medically necessary dental care that is furnished under Choice Program provider agreements. Without proper oral hygiene and dental care, bacteria in the mouth can reach levels that might lead to oral infections, such as tooth decay and gum disease. In addition, certain medications—such as decongestants, antihistamines, painkillers, diuretics and antidepressants—can reduce saliva flow, where saliva washes away food and neutralizes acids produced by bacteria in the mouth and helps protect from microbial invasion or overgrowth that might lead to gum disease. Dental

care is critical to ensure monitoring or treatment of oral inflammation or infection that can be associated with overgrowth of oral bacterial, where this inflammation or infection can negatively impact a person's overall health and has been linked to specific diseases. For instance, endocarditis is an infection of the inner lining of your heart (endocardium), which typically occurs when bacteria or other germs from another part of your body, such as your mouth, spread through your bloodstream and attach to damaged areas in your heart. More generally, heart disease, clogged arteries and stroke might be linked to the inflammation and infections that oral bacteria can cause. Lastly, periodontitis (severe gum disease) has been linked to premature birth and low birth weight.

The lack of full coverage for general care and services that cannot be absorbed under the current contract expansions until the contractual network of providers is fully functional, and the lack of coverage for certain specific services that are excluded under VA's current community care contracts (to include expansions) and where some providers may not enter into the new contractual network of providers in the future, will create disruptions in the provision of care and services if VCAs are not in place prior to June 6, 2019. VA reviewed data from October 2017 through August 2018 and determined that there were more than 183,000 unique patients that were furnished VA community care under Choice provider agreements. Two predominant categories of care that have briefly been discussed for which these provider agreements have been used are home health services (with roughly 53,659 unique patients affected) and dental care (with roughly 24,846 unique patients affected). Although VA cannot predict with certainty that this same number of individuals will continue to require care under a Veterans Care Agreement, VA expects that a significant number of patients will require care and services under such agreements. Considering the risk to disrupting the furnishing of care for individuals who will need to receive care and services under VCAs, it is impracticable and contrary to the public interest to provide advance notice and opportunity to comment on these regulations, as this would considerably reduce the likelihood that VA will successfully transition away from the use of the current Choice provider agreements ahead of June 6, 2019.

The Secretary of Veterans Affairs finds there is good cause under 5 U.S.C. 553(b)(B) and (d)(3) to publish this rule with an immediate effective date, prior to the usual 30-day delay for an interim final rule to allow VA to begin entering into agreements immediately. This timeline is necessary to avoid potential gaps in community care because, for the reasons discussed above, entering into a broad array of agreements authorized under section 1703A, in advance of June 6, 2019, will be critical for the purposes of filling gaps in care coverage until the new contractual network is fully functional and ensuring VA has replacement instruments in place for specific care and services currently provided under Choice provider agreements with those entities and providers that are unwilling or unable to enter into conventional procurement contracts. Any further delay in the effective date of this rulemaking would substantially increase the risk that VA will be unable to enter into agreements in the timeframes necessary to fully achieve those purposes and mitigate or eliminate risk of significant disruptions to eligible individuals receiving community care.

For the above reasons, the Secretary issues this rule as an interim final rule with an immediate effective date. However, VA will consider and address comments that are received within 60 days of the date this interim final rule is published in the **Federal Register**.

Effect of Rulemaking

The Code of Federal Regulations, as revised by this rulemaking, will represent the exclusive legal authority on this subject. No contrary rules or procedures will be authorized. All VA guidance will be read to conform with this rulemaking if possible or, if not possible, such guidance will be superseded by this rulemaking.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that VA consider the impact of paperwork and other information collection burdens imposed on the public. Except for emergency approvals under 44 U.S.C. 3507(j), VA 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. VA has requested that OMB approve the collection of information on an emergency basis. This interim final rule includes provisions constituting new collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) that require approval by the Office of Management and Budget (OMB). Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking to OMB for review.

OMB assigns control numbers to collections of information it approves. VA 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. Proposed §§ 17.4110, 17.4130, and 17.4135 contain collections of information under the Paperwork Reduction Act of 1995. If OMB does not approve the collections of information as requested, VA will immediately remove the provisions containing a collection of information or take such other action as is directed by OMB.

Comments on the collections of information contained in this interim final rule should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies sent by mail or hand delivery to the Director, Office of Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW, Room 1063B, Washington, DC 20420; fax to (202) 273–9026; or through www.*Regulations.gov*. Comments should indicate that they are submitted in response to ''RIN 2900–AQ45 Veterans Care Agreements.''

OMB is required to make a decision concerning the collections of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed rule.

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

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of VA, including whether the information will have practical utility;
- Evaluating the accuracy of VA's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submission of responses.

The collections of information contained in the amendments to title 38 CFR part 17 are described immediately following this paragraph, under their respective titles. As discussed in the regulatory impact analysis, VA believes that the net impact of the reorganization of the collections of information is likely to be regulatory under E.O. 13771. For each of the new or proposed collections of information below, VHA used general wage data from the Bureau of Labor Statistics (BLS) to estimate the respondents' costs associated with completing the information collection. According to the latest available BLS data, the mean hourly wage of full-time wage and salary workers was $15.57 based on the BLS wage code—''31–1000 Healthcare Support Occupations.'' This information was taken from the following website: *https://www.bls.gov/oes/current/oes_nat.htm* (May 2018). This wage code was chosen because it represents most closely the types of providers likely to submit this information themselves, or those support occupations that will submit the information for such providers.

Title: Submission of information for application for certification.

OMB Control No.: 2900–xxxx (New).

CFR Provision: 38 CFR 17.4110.

Summary of collection of information: Proposed § 17.4110 requires eligible entities and providers to submit to VA information concerning applicable medical licenses, as well as other information as requested by VA to evaluate eligibility for certification.

Description of the need for information and proposed use of information: The information collection is authorized under 38 U.S.C. 1703A(c) and is necessary for and would be used to verify that non-VA entities and providers that are applying for certification—and, hence, the opportunity to furnish hospital care and medical services to covered veterans under a Veterans Care Agreement—meet basic standards to ensure patient safety.

Description of likely respondents: Eligible entities or providers furnishing care and services through the Veterans Community Care Program.

Average estimated number of respondents per year: (32,181 eligible entities or providers in year 1; 8,850 eligible entities or providers in year 2; 4,425 eligible entities or providers in year 3)/3 = 15,152.

Estimated frequency of responses per year: 1 time annually.

Estimated average burden per response: 5 minutes.

Estimated total annual reporting and recordkeeping burden: 1,263 hours.

Estimated cost to respondents per year: VHA estimates the total cost to all respondents to be $19,664.91 per year (1,263 burden hours × $15.57 per hour).

Title: Submission of notice to discontinue a Veterans Care Agreement.

OMB Control No.: 2900–xxxx (New).

CFR Provision: 38 CFR 17.4130.

Summary of collection of information: Proposed § 17.4130 requires eligible entities and providers to submit to VA a written notice of intent to discontinue a Veterans Care Agreement prior to the date of such discontinuation.

Description of the need for information and proposed use of information: The information collection is authorized under 38 U.S.C. 1703A(f)(1) and is necessary for and would be used to provide VA with adequate advance notice when an entity or provider intends to discontinue an agreement, for purposes of ensuring continuity of care.

Description of likely respondents: Eligible entities or providers furnishing care and services through the Veterans Community Care Program.

Estimated number of respondents per year: 152 eligible entities or providers (1% of average annual number of entities and providers estimated to be certified per year).

Estimated frequency of responses per year: 1 time per year.

Estimated average burden per response: 10 minutes.

Estimated total annual reporting and recordkeeping burden: 25 hours.

Estimated cost to respondents per year: VHA estimates the total cost to all respondents to be $389.25 per year (25 burden hours × $15.57 per hour).

Title: Submission of notices of dispute.

OMB Control No.: 2900–xxxx (New).

CFR Provision: 38 CFR 17.4135.

Summary of collection of information: Proposed § 17.4135 requires eligible entities and providers to submit to VA written notices of dispute that contain specific information to allow VA to assess and resolve the matter in dispute.

Description of the need for information and proposed use of information: The information collection is authorized under 38 U.S.C. 1703A(h) and is necessary for and would be used to permit VA to collect the minimally necessary information to assess and resolve matters in dispute.

Description of likely respondents: Eligible entities or providers furnishing care and services through the Veterans Community Care Program.

Estimated number of respondents per year: 803 eligible entities or providers (5% of average annual number of entities and providers estimated to be certified per year).

Estimated frequency of responses per year: 1 time per year.

Estimated average burden per response: 20 minutes.

Estimated total annual reporting and recordkeeping burden: 268 hours.

Estimated cost to respondents per year: VHA estimates the total cost to all respondents to be $4,172.76 per year (268 burden hours × $15.57 per hour).

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, is not applicable to this rulemaking because notice of proposed rulemaking is not required. 5 U.S.C. 601(2), 603(a), 604(a).

Executive Orders 12866, 13563 and 13771

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action,'' which requires review by OMB, as ''any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

VA has examined the economic, interagency, budgetary, legal, and policy implications of this regulatory action and determined that the action is a significant regulatory action under Executive Order 12866, because it raises novel legal or policy issues arising out

of legal mandates, the President's priorities, or the principles set forth in this Executive Order. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov*, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's website at *http://www.va.gov/orpm* by following the link for VA Regulations Published from FY 2004 through FYTD.

This interim final rule is considered an E.O. 13771 regulatory action. Details on the estimated costs of this interim final rule can be found in the rule's economic analysis. VA has determined that the net costs are $7.4 million over a five-year period (FY2019–FY2023) and $656,053.56 per year on an ongoing basis discounted at 7 percent relative to year 2016, over a perpetual time horizon.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This interim final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are as follows: 64.009, Veterans Medical Care Benefits; and 64.018, Sharing Specialized Medical Resources.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert L. Wilkie, Secretary, Department of Veterans Affairs, approved this document on March 7, 2019, for publication.

Dated: May 10, 2019.

Consuela Benjamin,

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

For the reasons set forth in the preamble, we amend 38 CFR part 17 as follows:

PART 17—MEDICAL

■ 1. The general authority citation for part 17 continues, and an authority for section 17.4100 *et seq.* is added, to read as follows:

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

* * * * *

Section 17.4100 *et seq.* is also issued under 38 U.S.C. 1703A.

■ 2. Add an undesignated center heading and §§ 17.4100 through 17.4135 to read as follows:

Veterans Care Agreements

Sec.

§ 17.4100 Definitions.

For the purposes of §§ 17.4100 through 17.4135, the following definitions apply:

Contract is any of the following: Federal procurement agreements regulated by the Federal Acquisition Regulation; common law contracts; other transactions; or any other instrument. Veterans Care Agreements are excluded from this definition.

Covered individual is an individual who is eligible to receive hospital care, medical services, or extended care services from a non-VA provider under title 38 U.S.C. and title 38 CFR.

Extended care services are the services described in 38 U.S.C. 1710B(a).

Hospital care is defined in 38 U.S.C. 1701(5).

Medical services is defined in 38 U.S.C. 1701(6).

Sharing agreement is an agreement, under statutory authority other than 38 U.S.C. 1703A, by which VA can obtain hospital care, medical services, or extended care services for a covered individual.

VA facility is a point of VA care where covered individuals can receive hospital care, medical services, or extended care services, to include a VA medical center, a VA community-based outpatient clinic, a VA health care center, a VA community living center, a VA independent outpatient clinic, and other VA outpatient services sites.

Veterans Care Agreement is an agreement authorized under 38 U.S.C. 1703A for the furnishing of hospital care, medical services, or extended care services to covered individuals.

§ 17.4105 Purpose and Scope.

(a) *Purpose.* Sections 17.4100 through 17.4135 implement 38 U.S.C. 1703A, as required under section 1703A(j). Section 1703A authorizes VA to enter into and utilize Veterans Care Agreements to furnish hospital care, medical services, and extended care services to a covered individual when such individual is eligible for and requires such care or services that are not feasibly available to the covered individual through a VA facility, a contract, or a sharing agreement.

(b) *Scope.* Sections 17.4100 through 17.4135 contain procedures, requirements, obligations, and limitations for: The process of certifying entities or providers under 38 U.S.C. 1703A; entering into, administering, furnishing care or services pursuant to, and discontinuing Veterans Care Agreements; and all disputes arising under or related to Veterans Care Agreements. Sections 17.4100 through 17.4135 apply to all entities and providers, where applicable, that are parties to a Veterans Care Agreement, participate in the certification process, or furnish hospital care, medical services, or extended care services pursuant to a Veterans Care Agreement.

§ 17.4110 Entity or provider certification.

(a) *General.* To be eligible to enter into a Veterans Care Agreement, an entity or provider must be certified by VA in accordance with the process and criteria established in paragraph (b) of this section. Additionally, an entity or provider must be actively certified while furnishing hospital care, medical services, or extended care services pursuant to a Veterans Care Agreement that the entity or provider has entered into with VA.

(b) *Process and criteria*—(1) *Application for certification.* An entity

or provider must apply for certification by submitting the following information and documentation to VA:

(i) Documentation of applicable medical licenses; and

(ii) All other information and documentation required by VA. This information and documentation may include, but is not limited to, provider first and last names, legal business names, National Provider Identifier (NPI), NPI type, provider identifier type (*e.g.,* individual or group practice), tax identification number, specialty (taxonomy code), business address, billing address, phone number, and care site address.

(2) *Approval or denial of certification.* (i) VA will review all information obtained by VA, including through applicable federal and state records systems and as submitted by the applicant, and will determine eligibility for certification.

(ii) An applicant must submit all information required under paragraph (b)(1) of this section.

(iii) VA will deny an application for certification if VA determines that the entity or provider is excluded from participation in a Federal health care program (as defined in section 1128B(f) of the Social Security Act (42 U.S.C. 1320a–7b(f)) under section 1128 or 1128A of such Act (42 U.S.C. 1320a–7 and 1320a–7a) or is identified as an excluded source on the System for Award Management Exclusions list described in part 9 of title 48, Code of Federal Regulations, and part 180 of title 2 of such Code, or successor regulations.

(iv) VA will deny an application for certification if VA determines that the applicant is already barred from furnishing hospital care, medical services, and extended care services under chapter 17 of title 38, U.S.C., because VA has previously determined the applicant submitted to VA a fraudulent claim, as that term is defined in 38 U.S.C. 1703D(i)(4), for payment for hospital care, medical services, or extended care services.

(v) VA may deny an application for certification if VA determines that based on programmatic considerations, VA is unlikely to seek to enter into a Veterans Care Agreement with the applicant.

(vi) VA will issue a decision approving or denying an application for certification within 120 calendar days of receipt of such application, if practicable. Notices of approval will set forth the effective date and duration of the certification. Notices of denial will set forth the specific grounds for denial and supporting evidence. A denial constitutes VA's final decision on the application.

(3) *Duration of certification and application for recertification.* (i) An entity or provider's certification under this section lasts for a three-year period, unless VA revokes certification during that three-year period pursuant to paragraph (b)(4) of this section.

(ii) A certified entity or provider must maintain its eligibility throughout the period in which it is certified and must inform VA of any changes or events that would affect its eligibility within 30 calendar days of the change or event.

(iii) A certified entity or provider seeking certification after the end of its current three-year certification must apply for recertification at least 60 calendar days prior to the expiration of its current certification; otherwise, the procedures set forth in paragraph (b)(3)(iv) of this section will apply. Upon application for recertification by the entity or provider, including submitting any new or updated information within the scope of paragraph (b)(1) of this section that VA requests in conjunction with such application for recertification, VA will reassess the entity or provider under the criteria in paragraph (b)(2) of this section. VA will issue a decision approving or denying the application for recertification within 60 calendar days of receiving the application, if practicable. Notice of the decision will be furnished to the applicant in writing. Notices of recertification will set forth the effective date and duration of the certification. Notices of denial will set forth the specific grounds for denial and supporting evidence. A denial constitutes VA's final decision on the application for recertification.

(iv) If a certified entity or provider applies for recertification after the deadline in paragraph (b)(3)(iii) of this section, such application will constitute a new application for certification and will be processed in accordance with paragraphs (b)(1) and (2) of this section.

(4) *Revocation of certification*—(i) *Standard for revocation.* VA may revoke an entity's or provider's certification in accordance with paragraphs (b)(2)(ii) through (v) of this section.

(ii) *Notice of proposed revocation.* When VA determines revocation is appropriate, VA will notify the entity or provider in writing of the proposed revocation. The notice of proposed revocation will set forth the specific grounds for the action and will notify the entity or provider that it has 30 calendar days from the date of issuance to submit a written response addressing either of the following:

(A) Documenting compliance and proving any grounds false, or

(B) Providing information and documentation that demonstrates the entity or provider has, subsequent to the notice of proposed revocation, achieved compliance with all criteria for certification set forth in paragraph (b)(2) of this section.

(iii) *Decision to revoke.* Following the 30-day response period, VA will consider any information and documentation submitted by the entity or provider and will, within 30 calendar days, determine whether revocation is warranted. If VA determines that revocation is not warranted, VA will notify the entity or provider of that determination in writing. If VA determines that revocation is warranted, the entity or provider will immediately lose certified status, and VA will issue a notice of revocation to the entity or provider. Notices of revocation will set forth the specific facts and grounds for, and the effective date of, such revocation. A notice of revocation constitutes VA's final decision.

(iv) *Effect of revocation.* Revocation of certification results in such status being rendered void, and the provider or entity may not furnish services or care to a covered individual under a Veterans Care Agreement prior to applying for and obtaining certified VCA status.

(The information collection requirements have been submitted to the Office of Management and Budget (OMB) and are pending OMB approval.)

§ 17.4115 VA use of Veterans Care Agreements.

(a) *Criteria for using.* VA may furnish hospital care, medical services, or extended care services through a Veterans Care Agreement only if:

(1) Such care or services are furnished to a covered individual who is eligible for such care or services under 38 U.S.C. chapter 17 and requires such care or services; and

(2) Such care or services are not feasibly available to that covered individual through a VA facility, contract, or sharing agreement. For purposes of this subparagraph, hospital care, medical services, or extended care services are not feasibly available through a VA facility, contract, or sharing agreement when VA determines that the medical condition of the covered individual, the travel involved, the nature of the care or services, or a combination of these factors make the use of a VA facility, contract, or sharing agreement impracticable or inadvisable.

(b) *Standards of conduct and improper business practices*—(1)

General. (i) Government business shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct. The general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships. The conduct of Government personnel must be such that they would have no reluctance to make a full public disclosure of their actions.

(ii) VA officials and employees are reminded that there are other statutes and regulations that deal with prohibited conduct, including:

(A) The offer or acceptance of a bribe or gratuity is prohibited by 18 U.S.C. 201. The acceptance of a gift, under certain circumstances, is prohibited by 5 U.S.C. 7353, and 5 CFR part 2635;

(B)(*1*) Certain financial conflicts of interest are prohibited by 18 U.S.C. 208 and regulations at 5 CFR part 2635.

(*2*) Contacts with an entity or provider that is seeking or receives certification under section 17.4110 of this part or is seeking, enters into, and/or furnishes services or care under a Veterans Care Agreement may constitute ''seeking employment,'' (see Subpart F of 5 CFR part 2635). Government officers and employees (employees) are prohibited by 18 U.S.C. 208 and 5 CFR part 2635 from participating personally and substantially in any particular matter that would affect the financial interests of any person from whom the employee is seeking employment. An employee who engages in negotiations or is otherwise seeking employment with an offeror or who has an arrangement concerning future employment with an offeror must comply with the applicable disqualification requirements of 5 CFR 2635.604 and 2635.606. The statutory prohibition in 18 U.S.C. 208 also may require an employee's disqualification from participation in matters pertaining to the certification of an entity or provider or a entering into and administering a Veterans Care Agreement with an entity or provider even if the employee's duties may not be considered ''participating personally and substantially'';

(C) Post-employment restrictions are covered by 18 U.S.C. 207 and 5 CFR part 2641, that prohibit certain activities by former Government employees, including representation of an entity or provider before the Government in relation to any particular matter involving specific parties on which the former employee participated personally and substantially while employed by the Government. Additional restrictions apply to certain senior Government employees and for particular matters under an employee's official responsibility; and

(D) Using nonpublic information to further an employee's private interest or that of another and engaging in a financial transaction using nonpublic information are prohibited by 5 CFR 2635.703.

(2) *Standards and requirements for entities or providers that enter into Veterans Care Agreements.* An entity or provider that enters into a Veterans Care Agreement must comply with the following standards and requirements throughout the term of the Veterans Care Agreement:

(i) Must have a satisfactory performance record.

(ii) Must have a satisfactory record of integrity and business ethics.

(iii) Must notify VA within 30 calendar days of the existence of an indictment, charge, conviction, or civil judgment, or Federal tax delinquency in an amount that exceeds $3,500.

(iv) Must not engage in any of the following:

(A) Commission of fraud or a criminal offense in connection with—

(*1*) Obtaining;

(*2*) Attempting to obtain; or

(*3*) Performing a public contract or subcontract, or a Veterans Care Agreement;

(B) Violation of Federal or State antitrust statutes relating to the submission of offers;

(C) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;

(D) Delinquent Federal taxes in an amount that exceeds $3,500. Federal taxes are considered delinquent for purposes of this provision if both of the following criteria apply:

(*1*) The tax liability is finally determined. The liability is finally determined if it has been assessed and all available administrative remedies and rights to judicial review have been exhausted or have lapsed.

(*2*) The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(E) Knowing failure by a principal, until 3 years after final payment on any Government contract awarded to the contractor (or any Veterans Care Agreement entered into with the entity or provider), to timely disclose to the Government, in connection with the award or agreement, performance, or closeout of the contract or agreement or a subcontract thereunder, credible evidence of—

(*1*) Violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code;

(*2*) Violation of the civil False Claims Act (31 U.S.C. 3729–3733); or

(*3*) Significant overpayment(s) on the contract or Veterans Care Agreement, other than overpayments resulting from contract financing payments. Contract financing payments means an authorized Government disbursement of monies to a contractor prior to acceptance of supplies or services by the Government; or

(F) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of an entity or provider.

(v) Must not submit to VA a fraudulent claim, as that term is defined in 38 U.S.C. 1703D(i)(4), for payment for hospital care, medical services, or extended care services.

§ 17.4120 Payment rates.

The rates paid by VA for hospital care, medical services, and extended care services (hereafter in this section referred to as ''services'') furnished pursuant to a Veterans Care Agreement will be the rates set forth in the price terms of the Veterans Care Agreement. Each Veterans Care Agreement will contain price terms for all services within its scope. Such payment rates will comply with the following parameters:

(a) Except as otherwise provided in this section, payment rates will not exceed the applicable Medicare fee schedule or prospective payment system amount (hereafter in this section referred to as ''Medicare rate''), if any, for the period in which the service was provided (without any changes based on the subsequent development of information under Medicare authorities).

(b) With respect to services furnished in a State with an All-Payer Model Agreement under section 1814(b)(3) of the Social Security Act (42 U.S.C. 1395f(b)(3)) that became effective on or after January 1, 2014, the Medicare rate under paragraph (a) will be calculated based on the payment rates under such agreement.

(c) Payment rates for services furnished in a highly rural area may

exceed the limitations set forth in paragraphs (a) and (b) of this section. The term ''highly rural area'' means an area located in a county that has fewer than seven individuals residing in that county per square mile.

(d) Payment rates may deviate from the parameters set forth in paragraphs (a) through (c) of this section when VA determines, based on patient needs, market analyses, health care provider qualifications, or other factors, that it is not practicable to limit payment for services to the rates available under paragraphs (a) through (c).

(e) Payment rates for services furnished in Alaska are not subject to paragraphs (a) through (d) of this section.

§ 17.4125 Review of Veterans Care Agreements.

VA will periodically review each Veterans Care Agreement that exceeds $5,000,000 annually, to determine if it is feasible and advisable to furnish the hospital care, medical services, and extended care services that VA has furnished or anticipates furnishing under such Veterans Care Agreements through a VA facility, contract, or sharing agreement instead. If VA determines it is feasible and advisable to provide any such hospital care, medical services, or extended care services in a VA facility or by contract or sharing agreement, it will take action to do so.

§ 17.4130 Discontinuation of Veterans Care Agreements.

(a) Discontinuation of the agreement by the entity or provider requires a written notice of request to discontinue, in accordance with the terms of the Veterans Care Agreement and the following notice requirements:

(1) Written notice must be received by VA at least 45 calendar days before the discontinuation date and must specify the discontinuation date; and

(2) Such notice must be delivered to the designated VA official to which such notice must be submitted under the terms of the Veterans Care Agreement, and the notice and delivery must comply with all terms of the Veterans Care Agreement.

(b)(1) Discontinuation of the agreement by VA requires a written notice of discontinuation to the entity or provider in accordance with the terms of the Veterans Care Agreement and the following notice standards:

(i) Written notice of discontinuation will be issued at least 45 calendar days before the discontinuation date, except as provided in subparagraph (ii).

(ii) Notice may be issued fewer than 45 calendar days before the discontinuation date, including notice that is effective immediately upon issuance, when VA determines such abbreviated or immediate notice is necessary to protect the health of covered individuals or when such abbreviated or immediate notice is permitted under the terms of the Veterans Care Agreement.

(2) Notice will be delivered to the entity or provider in accordance with the terms of the Veterans Care Agreement.

(3) VA may discontinue a Veterans Care Agreement for the following reasons:

(i) If VA determines the entity or provider failed to comply substantially with the provisions of 38 U.S.C. 1703A or 38 CFR 17.4100–17.4135

(ii) If VA determines the entity or provider failed to comply substantially with the provisions, terms, or conditions of the Veterans Care Agreement;

(iii) If VA determines the entity or provider is excluded from participation in a Federal health care program (as defined in section 1128B(f) of the Social Security Act (42 U.S.C. 1320a–7b(f)) under section 1128 or 1128A of such Act (42 U.S.C. 1320a–7 and 1320a–7a), or is identified as an excluded source on the System for Award Management Exclusions list described in part 9 of title 48, Code of Federal Regulations, and part 180 of title 2 of such Code, or successor regulations;

(iv) If VA ascertains that the entity or provider has been convicted of a felony or other serious offense under federal or state law and determines that discontinuation of the Veterans Care Agreement would be in the best interest of a covered individual or VA; or

(v) If VA determines it is reasonable to discontinue the Veterans Care Agreement based on the health care needs of a covered individual.

(The information collection requirements have been submitted to the Office of Management and Budget (OMB) and are pending OMB approval.)

§ 17.4135 Disputes.

(a) *General.* (1) This section establishes the administrative procedures and requirements for asserting and resolving disputes arising under or related to a Veterans Care Agreement. For purposes of this section, a dispute means a disagreement, between VA and the entity or provider that entered into the subject Veterans Care Agreement with VA, that meets the following criteria:

(i) Pertains to one of the subject matters set forth in paragraph (b) of this section;

(ii) Is not resolved informally by mutual agreement of the parties; and

(iii) Culminates in one of the parties demanding or asserting, as a matter of right, the payment of money in a sum certain under the Veterans Care Agreement, the interpretation of the terms of the Veterans Care Agreement or a specific authorization thereunder, or other relief arising under or relating to the Veterans Care Agreement. However, a dispute does not encompass any demand or assertion, as a matter of right, for penalties or forfeitures prescribed by a statute or regulation that another federal agency is specifically authorized to administer, settle, or determine.

(2) The procedures established in this section should only be used when the parties to a Veterans Care Agreement have failed to resolve an issue in controversy by mutual agreement.

(3) The procedures established in this section constitute an entity's or provider's exclusive administrative remedy for disputes under this section.

(4) Disputes under this section are not considered claims for the purposes of laws that would otherwise require the application of sections 7101 through 7109 of title 41 U.S.C.

(5) An entity or provider must first exhaust the procedures established in this section before seeking judicial review under section 1346 of title 28 U.S.C.

(b) *Subject matter of disputes.* Disputes under this section must pertain to:

(1) The scope of one or more specific authorizations under the applicable Veterans Care Agreement; or

(2) Claims for payment under the applicable Veterans Care Agreement.

(c) *Procedures*—(1) *Initiation of dispute.* Disputes under this section must be initiated in accordance with the following procedures and requirements:

(i) Disputes must be initiated by submitting a notice of dispute, in writing, to the designated VA official to which notice must be submitted under the terms of the Veterans Care Agreement. The notice of dispute must comply with, and be submitted in accordance with, applicable terms of the Veterans Care Agreement.

(ii) The notice of dispute must contain all specific assertions or demands, all facts pertinent to the dispute, any specific resolutions or relief sought, and all information and documentation necessary to review and adjudicate the dispute.

(iii) The notice of dispute must be received by the designated VA official to which such notice must be submitted, in accordance with the terms of the

Veterans Care Agreement, within 90 calendar days after the accrual of the dispute. For purposes of this paragraph, the accrual of the dispute is the date when all events, that fix the alleged liability of either VA or the entity or provider and permit the applicable demand(s) and assertion(s), were known or should have been known. The term ''accrual of the dispute,'' as defined, has the following meanings in each of the two specific circumstances that follow:

(A) When a dispute consists of an entity or provider asserting that VA has made payment in an incorrect amount, under circumstances where VA has issued a corresponding payment notice and the entity or provider has received such notice, the accrual of the dispute is the date such notice was received by the entity or provider.

(B) When a dispute consists of an entity or provider asserting that VA has improperly denied payment to which it is entitled, under circumstances where VA has issued a corresponding denial of payment notice and the entity or provider has received such notice, the accrual of the dispute is the date such notice was received by the entity or provider.

(2) *VA authority to decide and resolve disputes arising under or relating to Veterans Care Agreements.* (i) A VA official acting within the scope of authority delegated by the Secretary of Veterans Affairs (hereafter referred to in this section as the ''responsible VA official'') will decide and resolve disputes under this section.

(ii) The authority to decide or resolve disputes under this section does not extend to the settlement, compromise, payment, or adjustment of any claim for payment that involves fraud or misrepresentation of fact. For purposes of this paragraph, ''misrepresentation of fact'' means a false statement of substantive fact, or any conduct which leads to the belief of a substantive fact material to proper understanding of the matter in hand, made with intent to deceive or mislead. If the responsible VA official encounters evidence of misrepresentation of fact or fraud on the part of the entity or provider, the responsible VA official shall refer the matter to the agency official responsible for investigating fraud and may refer the matter to other federal entities as necessary.

(3) *Review of dispute and written decision.* (i) Upon receipt of a notice of dispute, the responsible VA official will review the dispute and all facts pertinent to the dispute.

(ii) If the responsible VA official determines additional information or documentation is required for review and adjudication of the dispute, the official will, within 90 calendar days of VA's receipt of the notice of dispute, provide written notice to both parties, in accordance with the notice provisions of the Veterans Care Agreement, that additional information or documentation is required for review and adjudication of the dispute. Such notice will identify and request the additional information and documentation deemed necessary to review and adjudicate the dispute.

(iii) Upon VA receipt of a notice of dispute that conforms to the requirements of paragraph (c)(1) of this section (including containing all information and documentation necessary to review and adjudicate the dispute), the responsible VA official will take one of the following actions within 90 calendar days:

(A) Issue a written decision, in accordance with the notice provisions of the Veterans Care Agreement, to both parties. The written decision will include:

(*1*) A description of the dispute;

(*2*) A reference to the pertinent terms of the Veterans Care Agreement and any relevant authorizations;

(*3*) A statement of the factual areas of agreement and disagreement;

(*4*) A statement of the responsible official's decision, with supporting rationale; and

(*5*) A statement that the decision constitutes the final agency decision on the matter in dispute.

(B) Upon a determination that additional time is reasonably required to issue a decision, the responsible VA official will provide written notice to both parties, in accordance with the notice provisions of the Veterans Care Agreement, of such determination and the time within which a decision will be issued. The time within which a decision will be issued must be reasonable, taking into account the complexity of the dispute and any other relevant factors, and must not exceed 150 calendar days after receipt of a notice of dispute that conforms to the requirements of paragraph (c)(1) of this section and all information and documentation necessary to review and adjudicate the dispute. The responsible VA official will subsequently issue a written decision in accordance with paragraph (c)(3)(iii)(A) of this section.

(4) *Issuance of decision.* VA will furnish the decision to the entity or provider by any method that provides evidence of receipt.

(5) *Effect of decision.* A written decision issued by the responsible VA official constitutes the agency's final decision on the dispute.

(The information collection requirements have been submitted to the Office of Management and Budget (OMB) and are pending OMB approval.)

[FR Doc. 2019–10076 Filed 5–13–19; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 84 Tuesday,
No. 93 May 14, 2019

Part VI

The President

Proclamation 9881—Military Spouse Day, 2019

Federal Register
Vol. 84, No. 93
Tuesday, May 14, 2019

Presidential Documents

Title 3—

The President

Proclamation 9881 of May 9, 2019

Military Spouse Day, 2019

By the President of the United States of America

A Proclamation

Military spouses share an admirable legacy of unwavering devotion to their loved ones in uniform and to the cause of freedom. Wives and husbands stand faithfully beside their beloved service members and play a critical role in their ability to safeguard our country. They shoulder tremendous burdens and responsibilities and face demands that most families will never endure. Military spouses earn no rank or compensation, yet their contributions to our military might are invaluable. On Military Spouse Day, we honor our Nation's military spouses and express our deep appreciation for all that they do.

The nomadic nature of military life places tremendous pressure on military families. Frequent relocations, which require leaving behind the familiar—home, school, work, church, and friends—are commonplace. Military spouses nevertheless find ways to improve their communities, on and off the base, and to thrive in spite of the numerous hardships. Military spouses also demonstrate sacrificial love and provide essential support and encouragement to their service members during deployments. They comfort fearful and anxious children, balance work and school demands, and keep things going on the home front with uncommon grace and resourcefulness, despite the loneliness and anxiety that often accompany an extended absence.

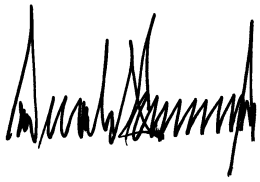
Frequent relocation also imposes substantial economic costs on our military families. For example, it results in unemployment and underemployment of military spouses. My Administration, therefore, is committed to enhancing opportunities for our Nation's military spouses. Last year, I was pleased to sign an Executive Order requiring Federal agencies to promote the use of existing military spouse noncompetitive hiring authority to the greatest extent possible, providing significantly greater opportunity for military spouses to be considered for Government positions. The Department of Defense's Military Spouse Employment Partnership has brought together more than 390 companies and organizations committed to recruiting, hiring, promoting, and retaining military spouses. Since the initiative's inception in 2011, these devoted partners have hired more than 130,000 military spouses. Employers who hire these spouses benefit from the tremendous talent, breadth of experience, and determination these men and women have learned from navigating the demands of military life.

I encourage all who enjoy the blessings of freedom—preserved and defended by our Nation's military and their families—to find ways to support our incredible military spouses. I applaud local government officials who have helped advance workforce freedom and mobility for military families. I encourage States and occupational licensing boards to build on these efforts and do more to improve license portability, removing barriers to military spouses remaining in the workforce following a change in duty station. Community leaders can also raise awareness about programs like Military OneSource, a one-stop resource for information, support, and referrals on every aspect of military life. And in neighborhoods nationwide, families can reach out, in word and deed, to spouses who are working to meet the unique challenges of military life.

Military spouses are among our country's unsung heroes and are at the heart of our Armed Forces. They embody strength and resilience, and represent the best of American patriotism, courage, character, and pride. As a Nation, we must ensure our military spouses receive the unparalleled and unwavering support they deserve. On this Military Spouse Day, Melania and I salute the extraordinary women and men who serve as military spouses and offer our prayers, respect, and gratitude on behalf of a grateful Nation.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 10, 2019, as Military Spouse Day. I call upon the people of the United States to honor military spouses with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of May, in the year of our Lord two thousand nineteen, and of the Independence of the United States of America the two hundred and forty-third.



[FR Doc. 2019–10130
Filed 5–13–19; 11:15 am]
Billing code 3295–F9–P

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