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Contents

Federal Register

Vol. 84, No. 250

Tuesday, December 31, 2019

Air Force Department
NOTICES
Meetings:
Federal Advisory Committee, 72334

Commerce Department
See Foreign-Trade Zones Board
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration

Commodity Futures Trading Commission
PROPOSED RULES
Post-Trade Name Give-Up on Swap Execution Facilities, 72262–72273

Defense Acquisition Regulations System
RULES
Defense Federal Acquisition Regulation Supplement:
Contractor Purchasing System Review Threshold, 72247–72249
Covered Defense Telecommunications Equipment or Services, 72231–72239
Demonstration Project for Contractors Employing Persons With Disabilities, 72554–72561
Restriction on the Acquisition of Certain Magnets and Tungsten, 72239–72245
Review of Defense Solicitations by Procurement Center Representatives, 72561–72563
Technical Amendments, 72563–72564
Trade Agreements Thresholds, 72245–72247

Defense Department
See Air Force Department
See Defense Acquisition Regulations System
NOTICES
Arms Sales, 72334–72346

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
2019 Immediate Aid To Restart School Operations, 72347
2019 Temporary Emergency Impact Aid for Displaced Students, 72346

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
PROPOSED RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
Alabama; 2010 1-Hour SO_2 NAAQS Transport Infrastructure, 72278–72289
New Mexico; Interstate Transport Requirements for the 2008 Ozone National Ambient Air Quality Standards, 72289
NOTICES
Meetings:
Chartered Science Advisory Board, 72356–72357

Federal Aviation Administration
RULES
Airworthiness Directives:
The Boeing Company Airplanes, 72227–72230
PROPOSED RULES
Airworthiness Directives:
Airbus Helicopters (Previously Eurocopter France), 72254–72257
Anjou Aeronautique Torso Restraint Systems, 72257–72260
Dassault Aviation Airplanes, 72251–72254
The Boeing Company Airplanes, 72260–72262
Remote Identification of Unmanned Aircraft Systems, 72438–72524
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Airman Knowledge Test Registration Collection, 72430

Federal Communications Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 72357–72362
Meetings:
North American Numbering Council, 72357

Federal Energy Regulatory Commission
NOTICES
Application:
Chittenden Falls Hydropower, Inc., 72348, 72355–72356
Pumped Hydro Storage, LLC, 72352
Renewable Energy Aggregators, 72351–72352
Combined Filings, 72348–72351, 72353–72355
Initial Market-Based Rate Filings Including Requests for Blanket Section 204 Authorizations:
Bolt Energy Marketing, LLC, 72347–72348
Petition for Declaratory Order:
Xcel Energy Services Inc., 72352–72353
Request Under Blanket Authorization:
Dominion Energy Transmission, Inc., 72351

Federal Highway Administration
NOTICES
Final Federal Agency Actions:
Proposed Highway Project in Rhode Island, 72430–72431
State Route 30, SR 303L to SR 202L in Maricopa County, AZ, 72431–72432

Federal Maritime Commission
NOTICES
Agreements Filed, 72362

Federal Railroad Administration
PROPOSED RULES
Rail Integrity Amendments and Track Safety Standards, 72526–72552

Federal Trade Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 72362–72364

Fish and Wildlife Service
NOTICES
Endangered and Threatened Species:
Receipt of Recovery Permit Applications, 72380–72382

Food and Drug Administration
RULES
Guidance:
Food Labeling: Serving Sizes of Foods That Can Reasonably Be Consumed at One Eating Occasion, Reference Amounts Customarily Consumed, Serving Size-Related Issues, Dual-Column Labeling, and Miscellaneous Topics, 72230–72231
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 72367–72368
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Focus Groups About Drug Products as Used by the Food and Drug Administration, 72369–72370
Unique Device Identification System, 72368–72369
Determination That Products Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness:
GLUCOPHAGE (Metformin Hydrochloride) Oral Tablets, 500 Milligrams, 850 Milligrams, and 1 Gram, and GLUCOPHAGE XR (Metformin Hydrochloride) Oral Extended-Release Tablets, 500 Milligrams and 750 Milligrams, 72366–72367
International Drug Scheduling; Convention on Psychotropic Substances; Single Convention on Narcotic Drugs; World Health Organization; Scheduling Recommendations:
AB-FUBINACA; 5F-AMB-PINACA; 5F-MDMB-PICA; et al., 72370–72377

Foreign-Trade Zones Board
NOTICES
Approval of Subzone Status:
The Lobster Trap Co; Bourne, MA, 72292
United Furniture Industries, Inc.; Nettleton and Amory (Monroe County), MS, 72292
Establishment of Foreign-Trade Zone Under Alternative Site Framework:
Lufkin, TX, 72292

General Services Administration
NOTICES
Meetings:
Modernizing Services for Regulation Management, 72364–72366

Health and Human Services Department
See Food and Drug Administration
See Inspector General Office, Health and Human Services Department
See National Institutes of Health
NOTICES
Meetings:
Advisory Council on Alzheimer's Research, Care, and Services, 72377–72378

Homeland Security Department
See U.S. Customs and Border Protection

Industry and Security Bureau
NOTICES
Recruitment of Members:
Technical Advisory Committees, 72292–72293

Inspector General Office, Health and Human Services Department
PROPOSED RULES
Solicitation of New Safe Harbors and Special Fraud Alerts, 72289–72291

Interior Department
See Fish and Wildlife Service

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Aluminum Extrusions From the People's Republic of China, 72294–72298
Refined Brown Aluminum Oxide From the People's Republic of China, 72293–72294
Welded Carbon Steel Standard Pipes and Tubes From India, 72298–72299

International Trade Commission
NOTICES
Investigations; Determinations, Modifications, and Rulings, etc.:
Certain Earpiece Devices and Components Thereof, 72382–72383

Justice Department
See Prisons Bureau

National Credit Union Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 72383

National Institutes of Health
NOTICES
Meetings:
Center for Scientific Review, 72378–72379
National Institute of Arthritis and Musculoskeletal and Skin Diseases, 72379
National Institute of Dental and Craniofacial Research, 72378

National Oceanic and Atmospheric Administration
NOTICES
Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review, 72333–72334
Meetings:
Fisheries of the Atlantic; Southeast Data, Assessment, and Review, 72307
Gulf of Mexico Fishery Management Council, 72299–72300
Pacific Fishery Management Council, 72306
Western Pacific Fishery Management Council, 72300–72301
Pacific Fishery Management Council, 72306–72307
Takes of Marine Mammals:
Incidental to Elkhorn Slough Tidal Marsh Restoration Project, Phase II in California, 72308–72321
Incidental to Seabird Research Activities in Central California, 72301–72306
Incidental to the Whittier Ferry Terminal Alaska Class Ferry Modification Project, 72321–72333
Whaling Provisions:
Aboriginal Subsistence Whaling Quotas, 72307–72308

Nuclear Regulatory Commission
NOTICES
Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations:
Biweekly Notice, 72384–72391
Establishment of Atomic Safety and Licensing Board, 72383, 72391
Meetings; Sunshine Act, 72383–72384

Personnel Management Office
PROPOSED RULES
Prevailing Rate Systems:
Definition of Pitt County, NC, to a Nonappropriated Fund Federal Wage System Wage Area, 72250–72251

Postal Regulatory Commission
NOTICES
New Postal Products, 72391–72392

Prisons Bureau
PROPOSED RULES
Good Conduct Time Credit Under the First Step Act, 72274–72278

Securities and Exchange Commission
NOTICES
Self-Regulatory Organizations; Proposed Rule Changes:
Cboe BZX Exchange, Inc., 72414–72424
Cboe Exchange, Inc., 72409–72414
Financial Industry Regulatory Authority, Inc., 72396–72409
NYSE Chicago, Inc., 72392–72396

State Department
NOTICES
Global Magnitsky Human Rights Accountability Act Annual Report, 72424–72430

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
NOTICES
Announcement of Requirements:
Secretary of Transportation's RAISE (Recognizing Aviation and Aerospace Innovation in Science and Engineering) Awards, 72433–72434
Request for Information:
Rural Opportunities To Use Transportation for Economic Success, 72432–72433

Treasury Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Tax Exempt Forms and Schedules, 72435

U.S. Customs and Border Protection
NOTICES
Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties, 72379–72380

Separate Parts In This Issue

Part II
Transportation Department, Federal Aviation Administration, 72438–72524

Part III
Transportation Department, Federal Railroad Administration, 72526–72552

Part IV
Defense Department, Defense Acquisition Regulations System, 72554–72564

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR

Proposed Rules:

532 72250

14 CFR

39 72227

Proposed Rules:

1 72438
39 (4 documents) 72251, 72254. 72257, 72260
47 72438
48 72438
89 72438
91 72438
107 72438

17 CFR

Proposed Rules:

37 72262

21 CFR

101 72230

28 CFR

Proposed Rules:

523 72274

40 CFR

Proposed Rules:

52 (2 documents) 72278, 72289

42 CFR

Proposed Rules:

1001 72289

48 CFR

204 (3 documents) 72231, 72554, 72563
212 (3 documents) 72231, 72239, 72554
213 72231
215 (2 documents) 72554, 72563
219 (2 documents) 72554, 72561
225 (2 documents) 72239, 72245
226 72554
244 72247
252 (5 documents) 72231, 72239, 72245, 72554, 72563

49 CFR

Proposed Rules:

213 72526

Rules and Regulations

Federal Register

Vol. 84, No. 250

Tuesday, December 31, 2019

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

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–9072; Product Identifier 2015–NM–110–AD; Amendment 39–19797; AD 2019–23–04]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain The Boeing Company Model 727 airplanes. This AD was prompted by the FAA's analysis of the Model 727 fuel system review conducted by the manufacturer. This AD requires modifying the fuel quantity indicating system (FQIS) to prevent development of an ignition source inside the body-mounted auxiliary fuel tanks due to electrical fault conditions. As an alternative to the modification, this AD allows deactivating the body-mounted auxiliary fuel tanks. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 4, 2020.

ADDRESSES:

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2016–9072; 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 final rule, the regulatory evaluation, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Jon Regimbal, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3557; email: *Jon.Regimbal@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Boeing Model 727 airplanes equipped with Boeing body-mounted auxiliary fuel tanks. The NPRM published in the **Federal Register** on September 23, 2016 (81 FR 65579). The NPRM was prompted by the FAA's analysis of the Model 727 fuel system review conducted by the manufacturer. The NPRM proposed to require modifying the FQIS to prevent development of an ignition source inside the body-mounted auxiliary fuel tanks due to electrical fault conditions. As an alternative to the modification, the NPRM proposed to allow deactivating the body-mounted auxiliary fuel tanks.

The FAA is issuing this AD to address ignition sources inside the body-mounted auxiliary fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The following presents the comments received on the NPRM and the FAA's response.

Request To Withdraw NPRM: No Unsafe Condition

Boeing requested that the FAA withdraw the NPRM. Boeing reported that its system safety assessment determined that the FQIS on the Model 727 airplane does not have an unsafe condition.

The FAA disagrees with the request. Boeing did not provide specific details about the type of assessment that was performed (total fleet risk, average risk per flight hour, peak individual flight risk, etc.). Based on Boeing's fuel system safety assessment submitted in response to Special Federal Aviation Regulation No. 88 (''SFAR 88'') of 14 CFR part 21, the FAA has determined that there is an unsafe condition due to the potential for a fuel tank ignition source to occur from the FQIS due to its design architecture, component design details, and installation design details. The FAA's determination was made in accordance with the guidance contained in FAA Policy Memorandum ANM100–2003–112–15, ''SFAR 88—Mandatory Action Decision Criteria,'' dated February 25, 2003.[1] Under that policy, an ignition source that can occur in a high-flammability fuel tank, due to a combination of a preexisting failure that can exist undetected for multiple flights and one additional failure, is an unsafe condition requiring corrective action. High-flammability fuel tanks are defined in the policy as fuel tanks with a fleet average flammability greater than 7 percent as calculated in accordance with 14 CFR Appendix N of part 25. At the time of the unsafe condition determination in April 2003, Boeing acknowledged that the Model 727 body-mounted auxiliary fuel tanks are high-flammability fuel tanks. The Boeing SFAR 88 report for the Model 727 showed that a combination of an in-tank wire fault or contamination condition (which can remain latent for multiple flights) and a hot short outside of the tank between the affected FQIS tank circuit and other aircraft power wiring cobundled with FQIS tank circuit wiring could result in an ignition source in the fuel tank. That combination of failures was classified by the FAA as a ''known combination of failures'' under the criteria in the policy memo due to the similarity of the Model 727 FQIS system architecture and design details to those of the Boeing Model 747 airplane involved in the TWA Flight 800 catastrophic fuel tank explosion accident in 1996. The National Transportation Safety Board (NTSB) concluded that an FQIS failure combination as described above was the most likely cause of that accident.[2] The FAA has therefore determined that it is necessary to issue this final rule.

[1] *http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgPolicy.nsf/0/dc94c3a46396950386256d5e006aed11/$FILE/Feb2503.pdf.*

[2] NTSB Aviation Accident Report AAR–00–03 *https://www.ntsb.gov/investigations/AccidentReports/Reports/AAR0003.pdf.*

Request To Withdraw NPRM: Limited Vulnerability to Unsafe Condition

Boeing requested that the FAA withdraw the NPRM. Boeing stated that 272 airplanes were manufactured with body-mounted auxiliary fuel tanks, but only six were operated under FAA jurisdiction when the comment was submitted, and that the fleet exposure continues to decrease due to airplane aging and retirements. Boeing stated that its safety assessment, using methodologies ''recognized by the FAA,'' shows that the vulnerability of the Model 727 FQIS latent failure plus single failure does not present an unsafe condition. Boeing concluded that requiring the proposed actions will not promote air safety and instead will add unnecessary cost to operators.

The FAA disagrees with the request. The FAA has determined that an unsafe condition exists. The FAA assumes that, in citing assessment methodologies recognized by the FAA, Boeing is referring to having performed its assessment of the total fleet risk for the Model 727 fleet that showed a very low likelihood of a fuel tank ignition event in the remaining life of that fleet. Boeing mentioned the number of airplanes operated under U.S. jurisdiction. The FAA, as the civil aviation authority of the state of design, is obligated, under the Convention on International Civil Aviation (the Treaty), to inform all affected aircraft of continuing safety issues regardless of where they are operated. Issuance of airworthiness directives is the accepted method by which the FAA notifies aviation authorities of other countries of an unsafe condition as required by Annex 8 of the Treaty.

The FAA's unsafe condition determination was made using the decision criteria in FAA Policy Memorandum ANM100–2003–112–15. This determination was not driven by a fleet risk assessment. A latent in-tank failure that provides a conductive path or reduces dielectric strength of the tank wiring or components, combined with an external wiring system failure that conducts power onto the tank wiring, could create an ignition source in the fuel tank of the Boeing Model 727 airplane. That combination of failures was classified as a ''known combination of failures'' under the criteria in the policy memorandum due to the similarity of the Model 727 FQIS system architecture and design details to those of the Model 747 airplane involved in the catastrophic fuel tank explosion. The NTSB concluded that an FQIS failure combination as described above was the most likely cause of that accident. The FAA therefore considers it necessary to address this unsafe condition. The per-airplane cost for modification is expected to be approximately the same as the cost of the similar actions required for Model 737 and 747 airplanes specified in AD 99–03–04, Amendment 39–11018 (64 FR 4959, February 2, 1999) (''AD 99–03–04''); and AD 98–20–40, Amendment 39–10808 (63 FR 52147, September 30, 1998) (''AD 98–20–40''). If an operator chooses to deactivate or remove the auxiliary tanks as allowed by the AD, the cost would be significantly lower. Therefore, the FAA made no changes in this final rule as a result of this comment.

Request To Withdraw NPRM: Extremely Remote Likelihood of Unsafe Condition

Boeing requested that the FAA withdraw the NPRM. Boeing considered the likelihood of an undetected latent electrical fault condition of the FQIS to be extremely remote, due to the FQIS architecture. Boeing added that the existing Model 727 FQIS design uses a three-wire system that goes directly from the fuel tank to the flight deck indication. Boeing stated that an electrical fault of an in-tank component causes the FQIS to provide a fault indication to the flight crew, so the failure is not latent.

The FAA disagrees with the request. The agency contacted Boeing to resolve the apparent conflict between this comment and the company's previously submitted SFAR 88 reports. In the SFAR 88 reports for Model 727 airplanes, Boeing stated that a latent in-tank failure condition could not be claimed to be extremely remote, and acknowledged that the system does not comply with the requirements of 14 CFR 25.981(a)(3) related to a latent failure plus a single failure. (Extremely remote qualitatively means that the condition would occur no more than a few times in the total fleet life. In numerical probability analysis, a condition that has a probability on the order of 1 in 10 million flight hours or less is considered extremely remote.) However, the comment that Boeing submitted to the NPRM stated that a latent in-tank failure was extremely remote.

A meeting with representatives from the FAA and Boeing was held February 15, 2019, to clarify Boeing's position. (A record of that meeting has been posted to the AD docket.) Boeing explained that it had intended to convey in its comment that the estimated probability for the initial failure that creates a latent in-tank loss of dielectric strength, resistive current path, or short condition is extremely remote. Boeing acknowledged that when the estimated probability of that failure initiation is multiplied by the average latency period, the probability of a latent in-tank failure existing in any given flight hour is not extremely remote.

Given this clarification, Boeing's comment was consistent with the conclusions of its SFAR 88 reviews. The FQIS does not provide a fault indication to the flight crew other than unusual readings or a zero reading provided by a tank gage if a hard short to ground or power occurs. In addition, even if such a fault is noted by the flight crew, the approved Master Minimum Equipment List for the Model 727 airplane allows operators to fly for up to ten days in that condition, without disconnecting the FQIS for the affected tank, with provisions for extending beyond the ten days. The FAA therefore does not agree that a latent failure of in-tank wiring or components, such that an ignition source could occur if an external hot short occurs, is extremely remote. No changes were made to this final rule as a result of this comment.

Request To Extend Compliance Time

Boeing requested that the FAA revise the proposed 12-month compliance time, which it asserts will require Model 727 operators to ''develop the solution on their own (under 14 CFR part 121).'' Boeing stated that it had no plans to create service action to modify the FQIS or deactivate the auxiliary tank(s), as no operators have contacted Boeing requesting this support.

The FAA disagrees with the request. Boeing did not propose a specific compliance time, and after consideration, the agency still considers 12 months to be adequate to allow operators to deactivate their auxiliary tanks using existing information in the airplane maintenance manual to develop alteration data and obtain FAA approval of an alternative method of compliance (AMOC). A compliance time of 12 months or less is required for the deactivation of other after-market body-mounted auxiliary fuel tanks on Model 727 airplanes in other ADs: AD 2008–07–07, Amendment 39–15448 (73 FR 15880, March 26, 2008); AD 2008–07–09, Amendment 39–15450 (73 FR 16515, March 28, 2008); AD 2008–12–03, Amendment 39–15546 (73 FR 31749, June 4, 2008); and AD 2009–20–01, Amendment 39–16024 (74 FR 48007, September 21, 2009). The FAA has not changed this AD regarding this issue. Under the provisions of paragraph (h) of this AD, however, the FAA will consider requests for approval of an extension to the compliance time if

sufficient data are submitted to substantiate that the new compliance time would provide an acceptable level of safety.

Request To Revise Cost Estimate

Boeing requested that if the NPRM is not withdrawn, the FAA revise the cost estimate to reflect the cost of developing an FQIS design solution for the body-mounted auxiliary tanks. Boeing expected that only six airplanes would actually be modified, so the cost of developing a design solution would be spread over a small number of airplanes, resulting in a significant per-airplane cost. Boeing did not provide any specific cost information or describe the modifications for which they provided cost comments.

The FAA disagrees with the request to revise the cost estimate based on this comment. The agency based its cost estimate for Model 727 passenger airplanes on the inflation-adjusted estimated costs for installation of transient suppression devices on the Model 747 airplane as required by AD 98–20–40. The FAA considers that the transient suppression design solutions, if not the actual parts, developed for Model 737 and 747 airplanes in response to AD 99–03–04 and AD 98–20–40 will be applicable to the Model 727 airplane due to the similarity of those models' FQIS designs. The FAA agrees that the nonrecurring design development costs associated with any necessary model-specific design activity will be spread over fewer airplanes, resulting in higher per-airplane costs if the operator decides not to deactivate the subject tanks. However, the FAA increased the cost estimate in the NPRM to reflect that increased cost to the existing fleet. Boeing did not propose any specific alternative cost figures to be substituted for the FAA estimate. The FAA did not change this final rule as a result of this comment.

Conclusion

The FAA reviewed the relevant data as previously discussed, considered the comments received, and determined that air safety and the public interest require adopting this final rule as proposed, except for minor editorial changes. The FAA has determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Costs of Compliance

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

ESTIMATED COSTS: REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Modification	300 work-hours × $85 per hour = $25,500	$100,000	$125,500	$753,000

ESTIMATED COSTS: ALTERNATIVE ACTIONS

Action	Labor cost	Parts cost	Cost per product
Tank deactivation	10 work-hours × $85 per hour = $850	$0	$850

Authority for This Rulemaking

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

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

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

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will 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 that this AD:

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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):

2019–23–04 The Boeing Company: Amendment 39–19797; Docket No.

FAA–2016–9072; Product Identifier 2015–NM–110–AD.

(a) Effective Date

This AD is effective February 4, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 727, 727–100, 727C, 727–100C, 727–200, and 727–200F series airplanes; certificated in any category; equipped with Boeing body-mounted auxiliary fuel tanks.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by the FAA's analysis of the Model 727 fuel system review conducted by the manufacturer. The FAA is issuing this AD to address ignition sources inside the body-mounted auxiliary fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

(f) Compliance

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

(g) Modification

Within 12 months after the effective date of this AD, do the actions specified in either paragraph (g)(1) or (2) of this AD, using a method approved in accordance with the procedures specified in paragraph (h) of this AD.

(1) Modify the fuel quantity indicating system (FQIS) to prevent development of an ignition source inside the body-mounted auxiliary fuel tanks due to electrical fault conditions.

(2) Deactivate the body-mounted auxiliary fuel tanks.

(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) 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 Company 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

For more information about this AD, contact Jon Regimbal, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3557; email: *Jon.Regimbal@faa.gov.*

(j) Material Incorporated by Reference

None.

Issued in Des Moines, Washington, on November 27, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–27885 Filed 12–30–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. FDA–2018–D–1459]

Food Labeling: Serving Sizes of Foods That Can Reasonably Be Consumed at One Eating Occasion, Reference Amounts Customarily Consumed, Serving Size-Related Issues, Dual-Column Labeling, and Miscellaneous Topics; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of availability.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of a final guidance for industry entitled ''Food Labeling: Serving Sizes of Foods That Can Reasonably Be Consumed At One Eating Occasion, Reference Amounts Customarily Consumed, Serving Size-Related Issues, Dual-Column Labeling, and Miscellaneous Topics.'' The final guidance provides questions and answers on topics related primarily to implementing two final rules, one entitled ''Food Labeling: Serving Sizes of Foods That Can Reasonably Be Consumed At One Eating Occasion; Dual-Column Labeling; Updating, Modifying, and Establishing Certain Reference Amounts Customarily Consumed; Serving Size for Breath Mints; and Technical Amendments,'' and the other entitled ''Food Labeling: Revision of the Nutrition and Supplement Facts Labels.'' The final guidance also discusses formatting issues for dual-column labeling, products that have limited space for nutrition labeling, and additional issues dealing with compliance.

DATES: December 31, 2019.

ADDRESSES: You may submit either electronic or written comments on FDA 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–2018–D–1459 for ''Food Labeling: Serving Sizes of Foods That Can Reasonably Be Consumed at One Eating Occasion, Reference Amounts Customarily Consumed, Serving Size-Related Issues, Dual-Column Labeling, and Miscellaneous Topics; Draft Guidance for Industry.'' Received comments will be placed in the docket and, except for those submitted as

''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' We will review this copy, including the claimed confidential information, in our consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Office of Nutrition and Food Labeling, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Jillonne Kevala, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–1450.

SUPPLEMENTARY INFORMATION:

I. Background

We are announcing the availability of a final guidance for industry entitled ''Food Labeling: Serving Sizes of Foods That Can Reasonably Be Consumed At One Eating Occasion, Reference Amounts Customarily Consumed, Serving Size-Related Issues, Dual-Column Labeling, and Miscellaneous Topics.'' We are issuing this guidance consistent with our good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on this topic. 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.

In the **Federal Register** of November 5, 2018 (83 FR 55323), we announced the availability of a draft guidance entitled, ''Food Labeling: Serving Sizes of Foods That Can Reasonably Be Consumed At One Eating Occasion, Reference Amounts Customarily Consumed, Serving Size-Related Issues, Dual-Column Labeling, and Miscellaneous Topics.'' The draft guidance was intended to provide questions and answers on topics related primarily to two final rules: (1) ''Food Labeling: Serving Sizes of Foods That Can Reasonably Be Consumed At One Eating Occasion; Dual-Column Labeling; Updating, Modifying, and Establishing Certain Reference Amounts Customarily Consumed; Serving Size for Breath Mints; and Technical Amendments'' (81 FR 34000 (May 27, 2016)); and (2) ''Food Labeling: Revision of the Nutrition and Supplement Facts Labels'' (81 FR 33742 (May 27, 2016)).

We gave interested parties until January 4, 2019, to submit comments for us to consider before beginning work on the final version of the guidance. We received over 40 comments on the draft guidance and have modified the final guidance where appropriate. Changes to the guidance include:

• Providing additional background information in response to a question regarding reference amounts customarily consumed (RACCs) for non-juice beverages for infants and young children;

• Modifying for clarity a question and response concerning whether the Nutrition Facts label for products sold in small packages (*e.g.,* certain sugar-free chewing gums) must list all nutrients that are contained in insignificant amounts; and

• Modifying the response to a question regarding the placement of the Nutrition Facts and Supplement Facts labels to clarify that the Nutrition Facts or Supplement Facts label should not be placed on the bottom of packages (such as the bottom of boxes, cans, and bottles), unless they are visible during normal retail display and consumer handling.

The guidance announced in this notice finalizes the draft guidance dated November 2018.

II. Paperwork Reduction Act of 1995

This final 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. 3501–3521). The collections of information in 21 CFR part 101 have been approved under OMB control number 0910–0381.

III. Electronic Access

Persons with access to the internet may obtain the guidance at either *https://www.fda.gov/FoodGuidances* or *https://www.regulations.gov.* Use the FDA website listed in the previous sentence to find the most current version of the guidance.

Dated: December 19, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–27868 Filed 12–30–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204, 212, 213, and 252

[Docket DARS–2019–0063]

RIN 0750–AJ84

Defense Federal Acquisition Regulation Supplement: Covered Defense Telecommunications Equipment or Services (DFARS Case 2018–D022)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule.

SUMMARY: DoD is issuing an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement sections of the National Defense Authorization Acts for Fiscal Years 2018 and 2019 related to

the procurement of covered telecommunications equipment or services. Specifically, the rule prohibits the procurement of any equipment, system, or service to carry out the DoD nuclear deterrence or homeland defense missions that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as a critical technology as a part of any system. Covered telecommunications equipment or services includes telecommunications equipment or services from certain Chinese entities, including their subsidiaries and affiliates, and from any other entities that the Secretary of Defense reasonably believes to be owned or controlled by or otherwise connected to, the government of the People's Republic of China or the Russian Federation.

DATES:

Effective Date: December 31, 2019.

Applicability: Contracting officers shall include the provisions at DFARS 252.204–7016, Covered Defense Telecommunications Equipment or Services—Representation, and DFARS 252.204–7017, Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services—Representation, as prescribed—

- In solicitations issued on or after December 31, 2019; and
- In solicitations issued before December 31, 2019, provided the resulting award occurs on or after December 31, 2019.

Contracting officers shall include the clause at DFARS 252.204–7018, Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services, as prescribed, in all awards made on or after December 31, 2019.

Contracting officers shall modify, in accordance with Federal Acquisition Regulation (FAR) 1.108(d), existing indefinite-delivery contracts, blanket purchase agreements, or basic ordering agreements to include the DFARS clause for future orders or calls, prior to placing any future orders or calls.

If modifying an existing contract, order, or call to extend the period of performance, including exercising an option, contracting officers shall include the DFARS clause in accordance with FAR 1.108(d).

Comment Date: Comments on the interim rule should be submitted in writing to the address shown below on or before March 2, 2020, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2018–D022, using any of the following methods:

○ *Federal eRulemaking Portal: http://www.regulations.gov.* Search for ''DFARS Case 2018–D022''. Select ''Comment Now'' and follow the instructions provided to submit a comment. Please include ''DFARS Case 2018–D022'' on any attached documents.

○ *Email: osd.dfars@mail.mil.* Include DFARS Case 2018–D022 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Heather Kitchens, OUSD(A&S)DPC/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal 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: Ms. Heather Kitchens, telephone 571–372–6104.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Acquisition Regulations System codifies and publishes uniform policies and procedures for acquisition by all executive agencies. The Federal Acquisition Regulations System consists of the Federal Acquisition Regulation (FAR), which is the primary document, and agency acquisition regulations that implement or supplement the FAR. The DFARS is a supplement to the FAR that provides DoD-specific acquisition regulations that DoD contracting officers—and those contractors doing business with DoD—must follow in the procurement process for supplies and services.

Section 1656 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 (Pub. L. 115–91) prohibited DoD from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service to carry out the DoD nuclear deterrence or homeland defense missions that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as a critical technology as a part of any system. Covered telecommunications equipment or services includes telecommunications equipment or services from certain Chinese entities, including their subsidiaries and affiliates, and from any other entities that the Secretary of Defense reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of the People's Republic of China or the Russian Federation.

Likewise, section 889(a)(1)(A) of the NDAA for FY 2019 (Pub. L. 115–232) established a Governmentwide prohibition on procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as a critical technology as a part of any system. Covered telecommunications equipment or services includes certain video surveillance and telecommunications equipment or services from certain Chinese entities, including their subsidiaries and affiliates, and from any other entities that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of the People's Republic of China.

The DoD prohibition under 1656 differs from the Governmentwide prohibition under 889(a)(1)(A) in that it: Applies to equipment, systems, or services to carry out the DoD nuclear deterrence or homeland defense missions; includes different definitions of ''covered telecommunications equipment or services'' and ''covered foreign country''; does not include exceptions from the prohibition; and provides independent waiver authority to the Secretary of Defense. This interim DFARS rule implements the section 1656 prohibition for DoD, and is structured to align with the FAR implementation of the section 889(a)(1)(A) Governmentwide prohibition.

To implement section 889(a)(1)(A) of the NDAA, DoD, the General Services Administration (GSA), and the National Aeronautics and Space Administration (NASA) published an interim rule in the **Federal Register** at 84 FR 40216 on August 13, 2019, as amended by the interim rule published at 84 FR 68314 on December 13, 2019 (reference FAR Case 2018–017, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment).

This interim DFARS rule implements the section 1656 and 889(a)(1)(A)

prohibitions for DoD, and is structured to align with the FAR implementation of the section 889(a)(1)(A) Governmentwide prohibition. The interim rule should increase security of systems and critical technology that is part of any system used to carry out the nuclear deterrence and homeland defense missions of DoD by prohibiting the use of telecommunications equipment or services from certain Chinese entities, including their subsidiaries and affiliates, and from any other entities that the Secretary of Defense reasonably believes to be owned or controlled by or otherwise connected to, the government of the People's Republic of China or the Russian Federation.

II. Discussion and Analysis

To implement the section 1656 prohibition and the DoD-specific procedures associated with the 889(a)(1)(A) prohibition in the FAR, this rule adds: DFARS subpart 204.21, Prohibition on Contracting for Certain telecommunications and Video Surveillance Services or Equipment; the provision at DFARS 252.204–7016, Covered Defense Telecommunications Equipment or Services—Representation; the provision at DFARS 252.204–7017, Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services—Representation; and the clause at DFARS 252.204–7018, Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services. The new DFARS subpart, provisions, and clause mirror the FAR implementation of section 889(a)(1)(A) at FAR subpart 4.21, the provisions at FAR 52.204–24 and 52.204–26, and the clause at FAR 52.204–25, but the subpart addresses the section 1656 prohibition. The section 889(a)(1)(A) prohibition remains implemented in the FAR, except that the DoD-specific procedures for handling representations from offerors and reports from contractors contained in this rule apply to both the section 1656 and 889 prohibitions.

The new DFARS subpart 204.21 notifies contracting officers of the section 1656 prohibition, provides DoD-specific procedures for sections 1656 and 889(a)(1)(A), advises of the waiver process for section 1656, and prescribes the two new solicitation provisions and the contract clause associated with section 1656. To differentiate between the FAR and DFARS prohibitions, this DFARS rule uses the term ''covered defense telecommunications equipment or services'' instead of ''covered telecommunications equipment or services,'' and provides a new definition of ''covered foreign country'' for the DFARS coverage of the section 1656 prohibition. These differences reflect the additional requirements in section 1656, which only apply to the DFARS rule.

This interim DFARS rule provides a two-tier representation structure to ensure contracting officers comply with the section 1656 prohibition. The DFARS provision 252.204–7016 requires offerors to represent in the System for Award Management (SAM) at least annually whether they provide covered defense telecommunications equipment or services as part of their offerings to the Government. Only offerors who represent that they do provide covered defense telecommunications equipment or services in the annual representation will be required to provide the offer-by-offer representation in the provision at DFARS 252.204–7017. If an offeror represents in its offer-by-offer representation under 252.204–7017 that it will provide covered defense telecommunications equipment or services as part of its offered products or services to DoD in the performance of any award resulting from the solicitation, then the offeror must provide certain disclosures about the equipment or services. DoD will use the information provided in the disclosure to determine whether the award is prohibited or if a waiver request may be appropriate. Offerors should note that annual representation in SAM is currently provided under the number 252.204–70ZZ, which references the clause at 252.204–YY; in the next release of updates to SAM, the provision will be updated to reflect 252.204–7016 and the clause will be updated to reflect 252.204–7018.

The FAR uses the same two-tier representation structure to implement the section 889(a)(1)(A) prohibition, because it significantly reduces the reporting burden on the public by allowing for an annual representation, in lieu of an offer-by-offer representation, if an offeror does not offer the prohibited products and services to the Government. At FAR 4.2103(a), contracting officers are directed to follow agency procedures when an offeror represents that it will include covered telecommunications equipment or services in its offer, or if the contracting officer has reason to question an offeror's representations.

To implement the section 889(a)(1)(A) prohibition, in part, and the section 1656 prohibition, this interim DFARS rule provides the agency procedures for handling the offeror representations in response to the FAR provisions at 52.204–26, 52.212–3(v), and 52.204–24, and the DFARS provisions at 252.204–7016 and 252.204–7017. The agency procedures require that, if the contracting officer has reason to question a negative representation from an offeror, then the contracting officer is instructed to consult with their requiring activity and legal counsel. If the offeror discloses information about covered telecommunications equipment or services to be included in its offer (as required by paragraph (e) of FAR 52.204–24) or covered defense telecommunications equipment or services (as required by paragraph (e) of DFARS 252.204–7017), then the contracting officer is required to forward the information to the requiring activity and may not award to the offeror unless the requiring activity advises that they have obtained one of the waivers described at FAR 4.2104 or DFARS 204.2104, as appropriate.

Similar to the clause at FAR 52.204–25, the new DFARS clause 252.204–7018 prohibits contractors from providing equipment, system, or services that use covered defense telecommunications equipment or services as a substantial or essential component of any system, or as a critical technology as a part of any system. However, unlike the FAR clause, this prohibition only applies if the equipment, systems, or services are to carry out the DoD nuclear deterrence or homeland defense missions. The clause requires contractors and subcontractors to report through *https://dibnet.dod.mil* any discovery of covered defense telecommunications equipment or services during the course of contract performance.

FAR 4.2103(b) directs contracting officers to follow agency procedures when a contractor provides the report required under FAR 52.204–25. This interim DFARS rule provides the agency procedures at DFARS 204.2103(b) for handling reports received under FAR 52.204–25 and DFARS 252.204–7018. Specifically, contracting officers are advised that they will be notified by Defense Cyber Crime Center regarding any reports received and the contracting officer shall consult with the requiring activity on how to proceed with the contract.

This interim rule also adds text in DFARS subpart 212.3, Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items, and DFARS subpart 213.2, Actions at or Below the Micro-purchase Threshold, to address application of section 1656 to commercial items and micro-purchases. This interim rule also amends DFARS 252.204–7007, Alternate A, Annual

Representations and Certifications, by updating the list of annual representations and certifications to include the new provision at DFARS 252.204–7016.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule creates two new provisions and a new clause, which apply to contracts at or below the simplified acquisition threshold (SAT) and to commercial items (including commercially available off-the-shelf (COTS) items). The following provisions and clause are created by this interim rule:

- The provision at DFARS 252.204–7016, Covered Defense Telecommunications Equipment or Services—Representation.
- The provision at DFARS 252.204–7017, Prohibition on Acquisition of Covered Defense Telecommunications Equipment or Services—Representation.
- The clause at DFARS 252.204–7018, Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services.

A. Applicability to Contracts at or Below the Simplified Acquisition Threshold

41 U.S.C. 1905 governs the applicability of laws to contracts or subcontracts in amounts not greater than the simplified acquisition threshold. It is intended to limit the applicability of laws to such contracts or subcontracts. 41 U.S.C. 1905 provides that if a provision of law contains criminal or civil penalties, or if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or below the SAT, the law will apply to them. The Principal Director, Defense Pricing and Contracting (DPC), is the appropriate authority to make comparable determinations for regulations to be published in the DFARS, which is part of the FAR system of regulations. DoD has made that determination to apply this rule at or below the simplified acquisition threshold.

B. Applicability to Contracts for the Acquisition of Commercial Items, Including COTS Items

10 U.S.C. 2375 governs the applicability of laws to contracts and subcontracts for the acquisition of commercial items, including COTS items, and is intended to limit the applicability of laws to contracts and subcontracts for the acquisition of commercial items, including COTS items. 10 U.S.C. 2375 provides that if a provision of law contains criminal or civil penalties, or if the Under Secretary of Defense (Acquisition and Sustainment) (USD(A&S)) makes a written determination that it is not in the best interest of the Federal Government to exempt commercial item contracts, the provision of law will apply to contracts for the acquisition of commercial items. Based on delegations of authority from USD(A&S), the Principal Director, DPC, is the appropriate authority to make this determination. DoD has made that determination to apply this rule to the acquisition of commercial items, including COTS items.

C. Determinations

Consistent with the determinations that DoD has made with regard to the application of the requirements of section 1656 of the NDAA for FY 2018, the two provisions and the clause apply to all solicitations and contracts, including solicitations and contracts below the SAT and to the acquisition of commercial items (including COTS items). It is important to apply the statutory prohibitions to all acquisitions in order to protect the security of nuclear command, control, and communications systems and ballistic missile defense from commercial dependencies on equipment and services from certain companies or certain foreign countries that are considered to create a risk to our national security.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This rule is not subject to the requirements of E.O. 13771, because the rule is issued with respect to a national security function of the United States.

VI. Regulatory Flexibility Act

This interim rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* An initial regulatory flexibility analysis has been performed and is summarized as follows:

This interim rule is necessary to implement section 1656 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 and section 889(a)(1)(A) of the NDAA for FY 2019.

The objective of this rule is to increase security of systems and critical technology that is part of any system used to carry out the nuclear deterrence and homeland defense missions of DoD by prohibiting the use of telecommunications equipment or services from certain Chinese entities, including their subsidiaries and affiliates, and from any other entities that the Secretary of Defense reasonably believes to be owned or controlled by or otherwise connected to, the government of the People's Republic of China or the Russian Federation.

To implement the prohibition, this rule creates two new representations and a new reporting requirement. Data from the Federal Procurement Data System (FPDS) and the System for Award Management (SAM) were used to estimate the number of small businesses that will be affected by this rule:

- DFARS provision 252.204–7016, Covered Defense Telecommunications Equipment or Services—Representation, requires each offeror to represent whether it provides covered defense telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument. All offerors will be required to complete this representation in the SAM at least annually. As of July 31, 2019, there were 424,927 active registrants in SAM. Approximately 49.78% (211,529) of the active SAM registrants completed the DoD-specific representations and certifications, of which approximately 158,647 (75 percent) are estimated to be registered as a small entity for their primary NAICS code. These small entities would be required to complete the representation under DFARS 252.204–7016.
- DFARS 252.204–7017, Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services—Representation, requires that if an offeror provides an affirmative representation under the DFARS provision 252.204–7016, then that

offeror will be required to represent on every solicitation whether it is including covered defense telecommunications equipment or services as a part of its offer in response to the solicitation. If the offeror responds affirmatively, the offeror is required to further disclose information about the covered defense telecommunications equipment or services. According to data in FPDS for fiscal years (FYs) 2016 through 2018, on average DoD makes awards each year to approximately 44,277 unique entities, of which 30,762 are unique small entities. DoD estimates that approximately 3,076 (10 percent) of the unique small entities that receive DoD awards each year may be required to submit the additional offer-by-offer representation. DoD further estimates that of the estimated 3,076 unique small entities that may be required to represent on an offer-by-offer basis, it is estimated that 10 percent (308 unique small entities) may also be required to provide the additional disclosure within the representation.

• DFARS clause 252.204–7018, Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services, requires contractors and subcontractors to report through *https://dibnet.dod.mil,* any discovery of covered defense telecommunications equipment or services that is being used as a substantial or essential component of any system, or as critical technology as part of any system, during the course of contract performance. At this time, there is no way for DoD to estimate how many contractors (small or otherwise) may make such discovery and be required to submit a report; however, DoD expects this number to be relatively low. DoD estimates that approximately 1,538 entities (5 percent of the 30,762 unique small entities that receive DoD awards annually) may be required to submit a report to DIBNET.

The rule does not duplicate, overlap, or conflict with any other Federal rules. This interim rule mirrors implementation of a similar prohibition in the Federal Acquisition Regulation associated with section 889(a)(1)(A) of the FY 2019 NDAA. It is necessary to create additional representations and reporting requirements in the DFARS to implement the section 1656 prohibition for DoD, because the statutory definitions that form the basis of the prohibitions are not the same. Section 889(a)(1)(A) includes certain types of video surveillance equipment in the definition of covered telecommunications equipment or services and defines ''covered foreign country'' as the People's Republic of China. In section 1656, covered telecommunications equipment and services includes only telecommunications equipment and services (not video surveillance equipment or services); is limited to equipment, system, or services used to carry out the nuclear deterrence and homeland defense missions; and includes Russia in the definition of ''covered foreign country.''

DoD has been unable to identify any significant alternatives that would accomplish the stated objectives of the statute and minimize any significant economic impact of the rule. Because this rule is a matter of national security, it must apply to acquisitions that do not exceed the simplified acquisition threshold (including micro-purchases), and acquisitions of commercial items (including commercially available off-the-shelf items). Small entities cannot be exempted from coverage without increased risk to national security. The rule is not expected to have significant economic impact, except on entities that currently or plan to include covered defense telecommunications equipment or services as part of their offered products and services to the Government.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2018–D022), in correspondence.

VII. Paperwork Reduction Act

DoD has requested and the Office of Management and Budget has approved an emergency clearance of information collection requirements under the Paperwork Reduction Act (44 U.S.C. chapter 35). DoD is soliciting comments on this emergency clearance 0750–0002, titled ''Covered Defense Telecommunications Equipment or Services.''

A. Estimate of Public Reporting Burden

The annual public reporting burden is estimated as follows:

DFARS 252.204–7016 Representation

Respondents: 211,529.
Responses per respondent: 1.
Total annual responses: 211,529.
Hours per response: 0.08333.
Total Burden Hours: 17,627.

DFARS 252.204–7017 Representation

Respondents: 4,428.
Responses per respondent: 45.
Total annual responses: 199,260.
Hours per response: 0.08333.
Total burden hours: 16,604.

DFARS 252.204–7017 Disclosure

Respondents: 443.
Responses per respondent: 45.
Total annual responses: 19,935.
Hours per response: 3.
Total burden hours: 59,805.

DFARS 252.204–7018 Reporting

Respondents: 443.
Responses per respondent: 5.
Total annual responses: 2,215.
Hours per response: 1.5.
Total burden hours: 3,323.

Total Public Responses and Hours

Total annual responses: 432,939.
Total burden hours: 97,359.

B. Request for Comments Regarding Paperwork Burden

Written comments and recommendations on the information collection, including suggestions for reducing this burden, should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503, or email *Jasmeet_K._Seehra@omb.eop.gov,* with a copy to the Defense Acquisition Regulations System, Attn: Ms. Heather Kitchens, OUSD(A&S)DPC/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060. Comments can be received from 30 to 60 days after the date of this notice, but comments to OMB will be most useful if received by OMB within 30 days after the date of this notice.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the DFARS, and will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Acquisition Regulations System, Attn: Ms. Heather

Kitchens, OUSD(A&S)DPC/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060, or email *osd.dfars@mail.mil.* Include DFARS Case 2018–D022 in the subject line of the message.

VIII. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. It is critical that the DFARS is immediately revised to include the requirements of this statute for the reason described below.

Section 1656 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 (Pub. L. 115–91) provides that DoD may not procure or obtain, or extend or renew a contract to procure or obtain, any equipment, system, or service to carry out the DoD nuclear deterrence or homeland defense missions that uses covered defense telecommunications equipment or services as a substantial or essential component of any system or as a critical technology as a part of any system. The section 1656 prohibition is similar to the Government-wide prohibition enacted under section 889 of the NDAA for FY 2019 (Pub. L. 115–232) on the procurement of equipment, systems, or services that use covered telecommunications and video surveillance equipment or services as a substantial or essential component of any system or as a critical technology as a part of any system. The rule also implements DoD-specific procedures associated with the section 889(a)(1)(A) prohibition in the FAR.

While DoD worked closely with GSA, NASA, and the Office of Federal Procurement Policy to develop the framework for these types of prohibitions in the FAR rule implementing section 889, DoD issued internal guidance to establish an approval process for the procurement of certain telecommunications and video surveillance services or equipment. However, codification of this prohibition in the DFARS and the procedures contained in this rule are urgent, because the rule aligns with the rollout of the annual representation from offerors in the System for Award Management. The representations from offerors required by this rule will give the Department the assurances it needs that it is not violating the statutory prohibition and that it can rely on the integrity and security of equipment that is critical to the DoD nuclear deterrence mission of DoD and the homeland defense mission. It is essential that DoD be able to protect against entities that may intentionally try to deliver products or services that could infiltrate and exploit our military communications and jeopardize our national security network.

DoD's highest priority missions (to include nuclear command, control, and communications, continuity of Government; and ballistic missile defense) must be executed with complete confidence on the security, reliability, and resiliency to operate in a cyber-contested environment. DoD must take immediate action to eliminate vulnerabilities in the supply chain that would undermine the security of our nation. However, pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b), DoD will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 204, 212, 213, and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 204, 212, 213, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 204, 212, 213, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 204—ADMINISTRATIVE MATTERS

■ 2. Amend section 204.1202 by—

■ a. Redesignating paragraphs (2)(i) through (xiii) as paragraphs (2)(ii) through (xix); and

■ b. Adding paragraph (2)(i).

The addition reads as follows:

204.1202 Solicitation provision.

(2) * * *

(i) 252.204–7016, Covered Defense Telecommunications Equipment or Services—Representation.

■ 3. Add subpart 204.21, consisting of 204.2100 through 204.2105, to read as follows:

SUBPART 204.21—PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

Sec.

204.2100 Scope of subpart.
204.2101 Definitions.
204.2102 Prohibition.
204.2103 Procedures.
204.2104 Waivers.
204.2105 Solicitation provisions and contract clause.

SUBPART 204.21—PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

204.2100 Scope of subpart.

This subpart implements section 1656 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115–91) and section 889(a)(1)(A) of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232).

204.2101 Definitions.

As used in this subpart—

Covered defense telecommunications equipment or services means—

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation, or any subsidiary or affiliate of such entities;

(2) Telecommunications services provided by such entities or using such equipment; or

(3) Telecommunications equipment or services produced or provided by an entity that the Secretary of Defense reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Covered foreign country means—

(1) The People's Republic of China; or

(2) The Russian Federation.

Covered missions means—

(1) The nuclear deterrence mission of DoD, including with respect to nuclear command, control, and communications, integrated tactical warning and attack assessment, and continuity of Government; or

(2) The homeland defense mission of DoD, including with respect to ballistic missile defense.

204.2102 Prohibition.

(a) *Prohibited equipment, systems, or services.* In addition to the prohibition at FAR 4.2102(a), unless the covered defense telecommunications equipment or services are subject to a waiver described in 204.2104, the contracting officer shall not procure or obtain, or extend or renew a contract (*e.g.,* exercise an option) to procure or obtain, any equipment, system, or service to carry out covered missions that uses covered defense telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

204.2103 Procedures.

(a) *Representations.*

(1)(i) If the offeror selects ''does not'' in response to the provision at DFARS

252.204–7016, the contracting officer may rely on the representation, unless the contracting officer has an independent reason to question the representation. If the contracting officer has a reason to question the ''does not'' representation in FAR 52.204–26, FAR 52.212–3(v), or 252.204–7016, then the contracting officer shall consult with the requiring activity and legal counsel.

(ii) If the offeror selects ''does'' in paragraph (c) of the provision at DFARS 252.204–7016, the offeror must complete the representation at DFARS 252.204–7017.

(2)(i) If the offeror selects ''will not'' in paragraph (d) of the provision at DFARS 252.204–7017, the contracting officer may rely on the representation, unless the contracting officer has an independent reason to question the representation. If the contracting officer has a reason to question the ''will not'' representation in FAR 52.204–24 or DFARS 252.204–7017, then the contracting officer shall consult with the requiring activity and legal counsel.

(ii) If an offeror selects ''will'' in paragraph (d) of the provision at DFARS 252.204–7017, the offeror must provide the information required by paragraph (e) of the provision. When an offeror completes paragraph (e) of either of the provisions at FAR 52.204–24 or DFARS 252.204–7017, the contracting officer shall—

(A) Forward the offeror's representation and disclosure information to the requiring activity; and

(B) Not award to the offeror unless the requiring activity advises—

(*1*) For equipment, systems, or services that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, that a waiver as described at FAR 4.2104 has been granted; or

(*2*) For equipment, systems, or services to be used to carry out covered missions that use covered defense telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, that a waiver as described at DFARS 204.2104 has been granted.

(b) *Reporting.* If a contractor reports information to *https://dibnet.dod.mil* in accordance with the clause at FAR 52.204–25 or DFARS 252.204–7018, the Defense Cyber Crime Center will notify the contracting officer, who will consult with the requiring activity on how to proceed with the contract.

204.2104 Waivers.

The Secretary of Defense may waive the prohibition in 204.2102(a) on a case-by-case basis for a single, one-year period, if the Secretary—

(a) Determines such waiver to be in the national security interests of the United States; and

(b) Certifies to the Congressional defense committees that—

(1) There are sufficient mitigations in place to guarantee the ability of the Secretary to carry out the covered missions; and

(2) The Secretary is removing the use of covered defense telecommunications equipment or services in carrying out such missions.

204.2105 Solicitation provisions and contract clause.

(a) Use the provision at 252.204–7016, Covered Defense Telecommunications Equipment or Services—Representation, in all solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items and, solicitations for task and delivery orders, basic ordering agreements (BOAs), orders against BOAs, blanket purchase agreements (BPAs), and calls against BPAs.

(b) Use the provision at 252.204–7017, Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services—Representation, in all solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, and solicitations for task and delivery orders, BOAs, orders against BOAs, BPAs, and calls against BPAs.

(c) Use the clause at 252.204–7018, Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services, in all solicitations and resultant awards, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, and solicitations and awards for task and delivery orders, BOAs, orders against BOAs, BPAs, and calls against BPAs.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 4. Amend section 212.301 by adding paragraphs (f)(ii)(H), (I), and (J) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(f) * * *

(ii) * * *

(H) Use the provision at 252.204–7016, Covered Defense Telecommunications Equipment or Services—Representation, as prescribed in 204.2105(a), to comply with section 1656 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115–91).

(I) Use the provision at 252.204–7017, Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services—Representation, as prescribed in 204.2105(b), to comply with section 1656 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115–91).

(J) Use the clause at 252.204–7018, Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services, as prescribed in 204.2105(c), to comply with section 1656 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115–91).

* * * * *

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

■ 5. Amend section 213.201 by adding a new paragraph (j) to read as follows:

213.201 General.

* * * * *

(j) Do not procure or obtain, or extend or renew a contract to procure or obtain, any equipment, system, or service to carry out covered missions that use covered defense telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless a waiver is granted. (See subpart 204.21.)

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. Amend section 252.204–7007 by—

■ a. Removing the clause date ''JUN 2019'' and adding ''DEC 2019'' in its place;

■ b. Redesignate paragraphs (d)(1)(i) through (viii) as paragraphs (d)(1)(ii) through (ix), respectively; and

■ c. Adding paragraph (d)(1)(i).

The addition reads as follows:

252.204–7007 Alternate A, Annual Representations and Certifications.

* * * * *

(d)(1) * * *

(i) 252.204–7016, Covered Defense Telecommunications Equipment or Services—Representation. Applies to all solicitations.

* * * * *

■ 7. Add sections 252.204–7016, 252.204–7017, and 252.204–7018 to read as follows:

252.204–7016 Covered Defense Telecommunications Equipment or Services—Representation.

As prescribed in 204.2105(a), use the following provision:

Covered Defense Telecommunications Equipment or Services—Representation (Dec 2019)

(a) *Definitions.* As used in this provision, *covered defense telecommunications equipment or services* has the meaning provided in the clause 252.204–7018, Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services.

(b) *Procedures.* The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (*https://www.sam.gov*) for entities excluded from receiving federal awards for ''covered defense telecommunications equipment or services''.

(c) *Representation.* The Offeror represents that it [ ] does, [ ] does not provide covered defense telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument.

(End of provision)

252.204–7017 Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services—Representation.

As prescribed in 204.2105(b), use the following provision:

Prohibition on the Acquisiton of Covered Defense Telecommunications Equipment or Services—Representation (Dec 2019)

The Offeror is not required to complete the representation in this provision if the Offeror has represented in the provision at 252.204–7016, Covered Defense Telecommunications Equipment or Services—Representation, that it ''does not provide covered defense telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument.''

(a) *Definitions. Covered defense telecommunications equipment or services, covered mission, critical technology,* and *substantial or essential component,* as used in this provision, have the meanings given in the 252.204–7018 clause, Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services, of this solicitation.

(b) *Prohibition.* Section 1656 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115–91) prohibits agencies from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service to carry out covered missions that uses covered defense telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) *Procedures.* The Offeror shall review the list of excluded parties in the System for Award Management (SAM) at *https://www.sam.gov* for entities that are excluded when providing any equipment, system, or service to carry out covered missions that uses covered defense telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless a waiver is granted.

(d) *Representation.* If in its annual representations and certifications in SAM the Offeror has represented in paragraph (c) of the provision at 252.204–7016, Covered Defense Telecommunications Equipment or Services—Representation, that it ''does'' provide covered defense telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument, then the Offeror shall complete the following additional representation:

The Offeror represents that it [ ] will [ ] will not provide covered defense telecommunications equipment or services as a part of its offered products or services to DoD in the performance of any award resulting from this solicitation.

(e) *Disclosures.* If the Offeror has represented in paragraph (d) of this provision that it ''will provide covered defense telecommunications equipment or services,'' the Offeror shall provide the following information as part of the offer:

(1) A description of all covered defense telecommunications equipment and services offered (include brand or manufacturer; product, such as model number, original equipment manufacturer (OEM) number, manufacturer part number, or wholesaler number; and item description, as applicable).

(2) An explanation of the proposed use of covered defense telecommunications equipment and services and any factors relevant to determining if such use would be permissible under the prohibition referenced in paragraph (b) of this provision.

(3) For services, the entity providing the covered defense telecommunications services (include entity name, unique entity identifier, and Commercial and Government Entity (CAGE) code, if known).

(4) For equipment, the entity that produced or provided the covered defense telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known).

(End of provision)

252.204–7018 Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services.

As prescribed in 204.2105(c), use the following clause:

Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services (Dec 2019)

(a) *Definitions.* As used in this clause—

Covered defense telecommunications equipment or services means—

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation, or any subsidiary or affiliate of such entities;

(2) Telecommunications services provided by such entities or using such equipment; or

(3) Telecommunications equipment or services produced or provided by an entity that the Secretary of Defense reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Covered foreign country means—

(1) The People's Republic of China; or

(2) The Russian Federation.

Covered missions means—

(1) The nuclear deterrence mission of DoD, including with respect to nuclear command, control, and communications, integrated tactical warning and attack assessment, and continuity of Government; or

(2) The homeland defense mission of DoD, including with respect to ballistic missile defense.

''Critical technology'' means—

(1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;

(2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled—

(i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

(ii) For reasons relating to regional stability or surreptitious listening;

(3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);

(4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);

(5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or

(6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

Substantial or essential component means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) *Prohibition.* In accordance with section 1656 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115–91), the contractor shall not provide to the Government any equipment, system, or service to carry out covered missions that uses covered defense telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless the covered defense telecommunication equipment or services are covered by a waiver described in Defense Federal Acquisition Regulation Supplement 204.2104.

(c) *Procedures.* The Contractor shall review the list of excluded parties in the System for Award Management (SAM) at *https://www.sam.gov* for entities that are excluded when providing any equipment, system, or service, to carry out covered missions, that uses covered defense telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless a waiver is granted.

(d) *Reporting.*

(1) In the event the Contractor identifies covered defense telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, the Contractor shall report at *https://dibnet.dod.mil* the information in paragraph (d)(2) of this clause.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1) of this clause:

(i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of a covered defense telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

(End of clause)

* * * * *

[FR Doc. 2019–27824 Filed 12–30–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 225, and 252

[Docket DARS–2019–0016]

RIN 0750–AK15

Defense Federal Acquisition Regulation Supplement: Restriction on the Acquisition of Certain Magnets and Tungsten (DFARS Case 2018–D054)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, with changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2019 that prohibits acquisition of certain magnets and tungsten from North Korea, China, Russia, and Iran.

DATES: Effective December 31, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, telephone 571–372–6106.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published an interim rule in the **Federal Register** at 84 FR 18156 on April 30, 2019, to implement section 871 of the National Defense Authorization Act for Fiscal Year 2019, codified at 10 U.S.C. 2533c. 10 U.S.C. 2533c prohibits acquisition of certain magnets and tungsten from North Korea, China, Russia, and Iran. Four respondents submitted public comments in response to the interim rule.

II. Discussion and Analysis

DoD reviewed the public comments in the development of the final rule. A discussion of the comments and the changes made to the rule as a result of those comments is provided, as follows:

A. Summary of Significant Changes From the Interim Rule

1. Definitions.

• Added definitions of ''electronic device'' and ''tungsten heavy alloy'' at DFARS 225.7018–1 and the associated clause at DFARS 252.225–7052, Restriction on the Acquisition of Certain Magnets and Tungsten.

• Moved definitions of ''assembly,'' ''end item,'' and ''subsystem,'' which apply to both specialty metals (DFARS 225.7003) and certain magnets and tungsten (DFARS 225.7018) from DFARS 225.7003 to DFARS 225.7001 and included them in the clause at DFARS 252.225–7052.

2. Production of tungsten. Added a description of the production of tungsten at DFARS 225.7018–2(c), to explain the applicability of the restrictions on the production of tungsten.

3. Exceptions. Since samarium-cobalt magnets are restricted under 10 U.S.C. 2533b (specialty metals) as well as 10 U.S.C. 2533c—

• Added cross references to DFARS Procedures, Guidance, and Information (PGI) at DFARS 225.7018–3 to provide guidance where the exceptions for samarium-cobalt magnets under 10 U.S.C. 2533b are more stringent than the comparable exceptions under 10 U.S.C. 2533c;

• Provided the statutory cite to 10 U.S.C. 2533b(m)(4) and added the explanation of ''required form'' at DFARS 225.7003–3 and 2352.225–7009(c)(5), in lieu of the definitions of ''required form'' at DFARS 225.7003–1 and 252.225–7009(a), because it was not actually a definition of ''required form'' and a different explanation of ''required form'' is now required for the restrictions on samarium-cobalt and neodymium-iron-boron magnets; and

• Added a tailored explanation of ''required form'' to the nonavailability exception for tungsten heavy alloy and certain magnets at DFARS 225.7018–3(d) and 252.225–7052(c)(2). No explanation of required form is necessary with regard to tungsten powder.

4. Approval level for nonavailability determination. Lowered the approval level to head of the contracting activity for individual nonavailability determinations at DFARS 225.7018–4.

B. Analysis of Public Comments

1. General.

a. Support for statute and rule.

Comment: Multiple respondents expressed support for the statute and strong implementation of the statute in the interim rule. One respondent stated support for DoD's efforts to promulgate a strong rule that will support a robust and healthy domestic industrial base, because a strong national strategic materials industry is important to national security. This respondent also supported speedy implementation of a final rule. Another respondent noted that the interim rule will shield U.S. critical resource needs from the decisions of foreign adversaries.

Response: Noted.

b. Oppose the statute and the rule.

Comment: One respondent opposed 10 U.S.C. 2533c because the respondent believed that meaningful reform is necessary to mitigate U.S. reliance on foreign-sources critical minerals. This respondent recommended that DoD withdraw the interim rule to allow reasonable opportunity for the Administration to implement its recently published plan to reduce reliance on critical minerals from adversaries.

Response: DoD is required to comply with 10 U.S.C. 2533c. Specific comments with regard to implementation of the statute will be addressed in more detail in the following analysis.

c. Relationship to specialty metal regulations.

Comment: Most respondents welcomed the use of procedures from the specialty metals regulations, to the extent that the laws are comparable. One respondent stated that this will generally support quick and fair implementation of the law. According to this respondent, because the new statute at 10 U.S.C. 2533c closely mirrors the language on specialty metals at 10 U.S.C. 2533b, the interim rule appropriately uses the procedures from the specialty metals clause, and will be better in implementation for it, because use of existing procedures minimizes adjustments for suppliers and for DoD. This respondent also stated that DoD should recognize that Congress's intent was for the two laws to operate in a complementary fashion.

Several respondents recommended defining the term ''produce'' more in line with the definition of ''produce'' from the specialty metals clause (see discussion at section 3.).

One respondent was of the opinion that this interim rule conflicts with other Federal rules, because samarium-cobalt magnets are already controlled by the specialty metals statute, and this rule established new restrictions for samarium-cobalt magnets for contractors that already comply with specialty metals requirements. According to this respondent, the statute and implementing regulations set in place new and contradictory prohibitions for those critical magnets that may have undesirable and unintended consequences.

Response: To the extent that the new statute parallels the specialty metals statute, it makes sense to implement the statute in a way that is comparable.

To the extent that the new statute imposes new restrictions on samarium-cobalt magnets, those restrictions must be applied in a way that harmonizes with the specialty metals restrictions, while fully implementing the new statute. There are other instances of overlapping restrictions (*e.g.,* ball and roller bearings may be made from specialty metals), in which case a cross-reference is included to remind affected parties of the need to comply with both sets of restrictions (see DFARS 225.7009–2(b) and 252.226–7016(e)). A similar cross-reference to the specialty metal restrictions was included in the interim rule at DFARS 225.7018–2(c) (now 225.7018–2(b)(2)) and DFARS 252.225–7052(b)(3) (now 252.225–7052(b)(2)(ii)). This rule also reformats the explanation of the term ''required form'' for specialty metals and provides a new explanation as to the meaning of ''required form'' when applied to magnets. In addition, some pointers to the DFARS PGI have been added to provide additional guidance on the interrelationship of certain exceptions to the specialty metals restrictions on samarium-cobalt magnets in 10 U.S.C. 2033b and the new restrictions on samarium-cobalt magnets in 10 U.S.C. 2533c.

2. Covered materials. 10 U.S.C. 2533c defines ''covered material'' to mean samarium-cobalt magnets, neodymium-iron-boron magnets, tungsten metal powder, and tungsten heavy alloy or any finished or semi-finished component containing tungsten heavy alloy.

a. Remove samarium-cobalt magnets from the rule.

Comment: One respondent recommended removing samarium-cobalt magnets from the interim rule and considering ways to strengthen compliance for those magnets in accordance with the specialty metals statute, rather than regulating the same commodities through two separate regulatory instruments.

Response: Samarium-cobalt magnets are covered by both 10 U.S.C. 2533b (specialty metals) and 10 U.S.C. 2533c, implemented under this rule. 10 U.S.C. 2533c applies specific separate prohibitions to samarium cobalt magnets, which must be harmonized with the restrictions of 10 U.S.C. 2533b. The specialty metals statute is generally more stringent than 10 U.S.C. 2533c, requiring melt or production in the United States or a qualifying country, rather than just prohibiting melt or production in certain covered countries (North Korea, China, Russia, and Iran). However, if an exception to 10 U.S.C. 2533b, such as nonavailability from the United States or a qualifying country, applies, then the requirement to not buy a samarium-cobalt magnet melted or produced in a covered country remains in effect, unless a magnet melted or produced in any country except a covered country is also nonavailable.

b. Define ''tungsten heavy alloy.''

Comment: One respondent requested confirmation that ''tungsten heavy alloy'' means ASTM B–777 tungsten alloys.

Response: DoD has added a definition of ''tungsten heavy alloy'' so that it is clear whether a particular tungsten product is subject to the restrictions of 10 U.S.C. 2033c. In this final rule, ''tungsten heavy alloy'' is defined at DFARS 225.7018–1 and the associated clause at DFARS 252.225–7052. The definition recognizes two standards for specific classes of tungsten heavy alloy: ASTM B777 and SAE–AMS–T–2104. However, the definition also recognizes that there may be variants of tungsten heavy alloy that do not meet one of the standards for a specified class of tungsten heavy alloy, but are nevertheless in the tungsten heavy alloy family if the material contains at least 90 percent tungsten, combined with other metals such as nickel-iron or nickel-copper, and has a density of at least 16.5 g/cm3.

c. Add ''tantalum.''

Comment: One respondent recommended adding tantalum as a covered material, because this requirement is in the Senate and House versions of the NDAA for FY 2020 and is therefore ''virtually certain to become law soon.''

Response: DoD is unable to include tantalum in the DFARS until a law is enacted amending 10 U.S.C. 2533c to add tantalum as a covered material.

3. Melted or produced. With some exceptions, 10 U.S.C. 2533c prohibits procuring any covered material ''melted or produced'' in any covered country.

a. Define ''melted.''

Comment: One respondent requested confirmation that ''melted'' means ''Converting a metal stock to liquid form for the purpose of forming shapes that can subsequently undergo further processing into further forms.''

Response: The dictionary definition of ''melted'' is sufficiently clear, without need for further definition.

b. Coverage point for magnets.

Comment: One respondent stated that the coverage point in the interim rule for magnets is correct and well-considered, *i.e.,* the melting of samarium with cobalt to produce the samarium-cobalt alloy or melting of neodymium with iron and boron to produce the neodymium-iron-boron alloy, and all subsequent phases of production of the magnets shall not occur in a covered nation. According to this respondent, although the first few steps of the supply chain for these rare

earth magnets are overwhelmingly reliant on Chinese sources, for alloy and magnet manufacturing there is a robust and competitive non-Chinese market capable of meeting supply needs of DoD and of the commercial marketplace.

Response: DoD selected this coverage point for magnets as being in compliance with the statutory prohibition on the melting and production of magnets in a covered country.

c. Meaning of ''produced'' for tungsten.

Comment: Several respondents noted that the rule did not address the production process for tungsten. One respondent provided further details with regard to production of tungsten. According to the respondent, tungsten metal powder and tungsten heavy alloy are not manufactured through a melting process, but through production processes in which the dissolution/digestion process of converting tungsten ore and ammonium paratungstate into refined tungsten powder are the key, value added ''melt-equivalent'' steps. Therefore, the respondent suggested defining ''produce'' for tungsten (similar to the definition in the specialty metals clause) as (i) atomization; (ii) calcination and reduction into powder; or (iii) final consolidation of non-melt derived metal powders.

Response: This recommended description of the production of tungsten and tungsten heavy alloy has been added in the final rule at DFARS 225.7018–2(c) and in the clause DFARS 252.225–7052.

d. Meaning of ''produced'' for tantalum.

Comment: One respondent also addressed the production processes of tantalum.

Response: This comment is outside the scope of this case, because tantalum is not a covered material under 10 U.S.C. 2533c.

4. Nonavailability determination. 10 U.S.C. 2533c provides an exception if the Secretary of Defense determines that covered materials of satisfactory quality and quantity, in the required form, cannot be procured as and when needed at a reasonable price.

a. Appropriate approval level for nonavailability determinations.

Comment: One respondent considered the nonavailability determination process in the interim rule to be workable and appropriate. According to this respondent, DoD has struck a smart balance in determining the officials that can issue a nonavailability determination. The respondent recommended that DoD should retain this level of accountability in the final rule.

Another respondent with a less optimistic view on the availability of covered materials from non-Chinese sources considered the nonavailability determination process in the interim rule to be unnecessarily complex and burdensome. According to this respondent, limiting authority to grant individual determinations to five officials other than the Secretary of Defense and limiting the class nonavailability determination to one additional official is unwarranted and will grind the acquisition process to a halt. This respondent recommended that the Secretary of Defense make a nonavailability determination that applies to all DoD procurements, or grant contracting officers the authority to make nonavailability determinations, with both options relying on Federal Government studies and reports to date. This respondent was of the opinion that DoD does not have to immediately cut off the supply chain of critical minerals and cause major disruptions.

Response: In this final rule, DoD has made the head of the contracting activity the approving official at DFARS 225.7018–4(a) for individual nonavailability determinations, and does not limit further redelegation of this authority. However, USD(A&S)DASD for Industrial Policy still requires a copy of each individual nonavailability determination with supporting documentation and notification when individual waivers are requested, but denied. Because of the significant impact that a class determination of nonavailability may have, DoD has retained accountability at the USA(A&S) level and has made no changes to the requirements of the interim rule at DFARS 225.7018–4(b).

b. Criteria.

Comment: One respondent recommended that DoD should clarify the process and criteria for nonavailability determinations and explain to contractors what information DoD may require in support of such determinations.

Response: There are currently many source restrictions that allow an exception for nonavailability (such as the Buy American statute, the Berry Amendment at 10 U.S.C. 2533a, the specialty metal restrictions at 10 U.S.C. 2533b, and various appropriations act domestic source restrictions). This determination is not substantively different. As specified at DFARS 225.7018–3(d), the restriction does not apply if the authorized agency official concerned determines that ''compliant covered materials of satisfactory quality and quantity, in the required form, cannot be procured as and when needed at a reasonable price.'' Any entity seeking a nonavailability determination must provide the Government with sufficient data and a rationale to justify such a determination.

c. Public notice.

Comment: One respondent suggested that the nonavailability procedures can be improved by requiring expanded public notice to potential suppliers for nonavailability determinations both for class determinations and individual determinations. The respondent also recommended a mechanism for suppliers to appeal to DoD when they believe that a determination has been wrongly granted or has been rendered superfluous by the establishment of a new compliant source of supply.

Response: In an effort to balance the complexity and burden of the process against the expected benefits of additional public scrutiny and input, DoD considers that the requirements of the interim rule for publication of a notice of class determinations on the Federal Business Opportunities website is sufficient.

5. Flowdown.

Comment: One respondent stated that DoD should clarify whether or not it is mandatory to flow down the clause at DFARS 252.225–7052.

Response: The interim rule does not require flowdown of the clause at DFARS 252.225–7052, because the intent was that the prime contractor is responsible for delivery of a compliant product. However, since 10 U.S.C. 2533c(b) specifically states applicability to prime contracts and subcontracts at any tier, the final rule has been amended to specify flowdown in the clause at DFARS 252.225–7052.

6. Define ''end item.''

Comment: One respondent recommended confirmation that the term ''end item'' means ''The final production product when assembled or completed, and ready for issue, delivery, or deployment'' (*i.e.,* 10 U.S.C. 2533b(m)(9)).

Response: 10 U.S.C. 2533c specifies that the term ''end item'' has the meaning given in 10 U.S.C. 2533b(m). This has been clarified in the final rule by moving the definition of ''end item'' from 225.7003–1 to 225.7001, so that it is applicable to both 225.7003 (specialty metals) and 225.7018 (certain magnets and tungsten) and adding the definition to the clause at DFARS 252.225–7052. In addition, DoD similarly moved the definitions of ''assembly'' and ''subsystem'' to DFARS 225.7001 and added them to the clause at 252.225–7052.

7. Initial regulatory flexibility analysis. One respondent had several comments on the initial regulatory flexibility analysis (IRFA). For analysis of these comments, see section VI. of this preamble.

C. Other Changes

1. Definitions.

• Included the full definitions of ''bearing component,'' ''component,'' ''end product,'' and ''structural component of a tent'' at DFARS 225.7001, instead of referencing the definitions in the associated clauses.

• Included the full definitions of ''alloy,'' ''commercial derivative military article,'' ''electronic component,'' ''high performance magnet,'' ''produce,'' ''specialty metal,'' and ''steel'' in DFARS 225.7003–1, rather than just referencing the definitions in the associated specialty metal clauses at DFARS 252.225–7008 and 252.225–7009.

• Moved the definition of ''covered country'' into correct alphabetical order at DFARS 225.7018–1 and 252.225–7052(a).

2. Updated acronym. Revised ''USD(AT&L)'' to read ''USD(A&S)'' in several places at DFARS 225.7003–3.

3. Nonavailability determination. Corrected wording at DFARS 225.7018–3(d) to more accurately state the conditions for a nonavailability determination.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

The interim rule added a new clause at DFARS 252.225–7052, Restriction on the Acquisition of Certain Magnets and Tungsten, which does not apply to acquisitions below the simplified acquisition threshold (SAT), in accordance with 41 U.S.C. 1905, but applies to contracts for the acquisition of commercial items, except as provided in the statute at 10 U.S.C. 2533c(c)(3). There is no change to the clause or the applicability of the clause in the final rule.

A. Applicability to Contracts at or Below the Simplified Acquisition Threshold

41 U.S.C. 1905 governs the applicability of laws to contracts or subcontracts in amounts not greater than the SAT. It is intended to limit the applicability of laws to such contracts or subcontracts. 41 U.S.C. 1905 provides that if a provision of law contains criminal or civil penalties, or if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or below the SAT, the law will apply to them. The Principal Director, Defense Pricing and Contracting (DPC), is the appropriate authority to make comparable determinations for regulations to be published in the DFARS, which is part of the FAR system of regulations. DoD did not make that determination. Therefore, this rule will not apply below the SAT.

B. Applicability to Contracts for the Acquisition of Commercial Items, Including COTS Items

10 U.S.C. 2375 governs the applicability of laws to DoD contracts and subcontracts for the acquisition of commercial items, including COTS items, and is intended to limit the applicability of laws to contracts and subcontracts for the acquisition of commercial items, including COTS items. 10 U.S.C. 2375 provides that if a provision of law contains criminal or civil penalties, or if the Under Secretary of Defense for Acquisition and Sustainment ((USD) (A&S)) makes a written determination that it is not in the best interest of the Federal Government to exempt commercial item contracts, the provision of law will apply to contracts for the acquisition of commercial items. Due to delegations of authority from USD(A&S), the Principal Director, DPC, is the appropriate authority to make this determination. DoD has made that determination to apply this rule to the acquisition of commercial items, including COTS items, if otherwise applicable.

10 U.S.C. 2533c specifically exempts the acquisition of an end item that is a COTS item, other than a COTS item that is 50 percent or more tungsten by weight, or a mill product that has not been incorporated into an end item, subsystem, assembly, or component. Although 10 U.S.C. 2533c does not refer to 10 U.S.C. 2375 and provide that, notwithstanding those statutes it shall be applicable to contracts for the procurement of commercial items, it is the clear intent of the statute to cover commercial items, other than those specifically exempted. Therefore, DoD has signed a determination of applicability to acquisitions of commercial items, except as exempted in the statute.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This rule is not subject to the requirements of E.O. 13771, because this rule is issued with respect to a national security function of the United States as discussed in section VIII of preamble of the interim rule published at 84 FR 18156. No comments were received on the designation.

VI. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows: This rule is required to implement section 871 of the National Defense Authorization act (NDAA) for Fiscal Year (FY) 2019, which is codified at 10 U.S.C. 2533c. The objective of the rule is to prohibit acquisition of sensitive materials (*i.e.* samarium-cobalt magnets, neodymium-iron-boron magnets, tungsten metal powder, and tungsten heavy alloy or any finished or semi-finished components containing tungsten heavy alloy melted or produced in North Korea, China, Russia, or Iran).

One respondent had several comments in response to the initial regulatory flexibility analysis.

Comment: The respondent noted that the statement that ''DoD expects there will be some adjustment period as U.S. and other non-prohibited sources comes on line'' ignores the obvious significant risk of disruption this new prohibition will cause DoD and its suppliers.

Response: The IRFA acknowledged that there will be an adjustment period. There is, however, an exception for nonavailability, which may initially be utilized until more non-prohibited sources become available. The final rule has also facilitated nonavailability determinations by reducing the approval level for individual determinations to the head of the contracting activity, with power of redelegation.

Comment: The respondent did not agree with the assertion that there are no

projected reporting or recordkeeping requirements as a result of this rule.

Response: The rule does not impose any specific reporting or recordkeeping requirements. It does not specify what records must be kept, or for how long. It is up to the Contractor how to track compliance with the rule, without any additional recordkeeping requirements imposed by the Government.

Comment: According to the respondent, the rule conflicts with other Federal rules.

Response: As stated in the response in section 1.c., the fact that two statutes, and the regulations implementing them, apply different restrictions to the same item does not create a conflict. Rather, the overlapping restrictions must be applied together in harmony, so that, in any given circumstance, the effective requirements can be determined.

Based on Federal Procurement Data System data for FY 2017, DoD awarded in the United States 13,400 contracts that exceeded $250,000 and were for the acquisition of manufactured end products (excluding those categories that could not include samarium-cobalt magnets, neodymium-iron-boron magnets, or a covered form of tungsten (such as clothing and fabrics, books, or lumber products)). These contracts were awarded to 5,073 unique entities, of which 3,074 were small entities. It is not known what percentage of these awards involved samarium-cobalt magnets, neodymium-iron-boron magnets, or a covered form of tungsten, or what lesser percentage might involve such materials from China, North Korea, Russia, or Iran.

As discussed above, there are no projected reporting or recordkeeping requirements in this rule. However, based on this rule, there may be compliance costs to track the origin of covered materials.

DoD is exempting acquisitions equal to or less than the SAT in accordance with 41 U.S.C. 1905. DoD was unable to identify any other alternatives that would reduce burden on small businesses and still meet the objectives of the statute.

VII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 212, 225, and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Accordingly, the interim rule amending 48 CFR parts 212, 225, and 252, which was published in the **Federal Register** at 84 FR 18156 on April 30, 2019, is adopted as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 225—FOREIGN ACQUISITION

■ 2. Revise section 225.7001 to read as follows:

225.7001 Definitions.

As used in this subpart—

Assembly means an item forming a portion of a system or subsystem that—

(1) Can be provisioned and replaced as an entity; and

(2) Incorporates multiple, replaceable parts.

Bearing components means the bearing element, retainer, inner race, or outer race.

Component means any item supplied to the Government as part of an end item or of another component except that for use in 225.7007, the term means an article, material, or supply incorporated directly into an end product.

End item, as used in sections 225.7003 and 225.7018, means the final production product when assembled or completed and ready for delivery under a line item of the contract (10 U.S.C. 2533b(m)).

End product means supplies delivered under a line item of the contract.

Hand or measuring tools means those tools listed in Federal supply classifications 51 and 52, respectively.

Structural component of a tent—

(1) Means a component that contributes to the form and stability of the tent (*e.g.,* poles, frames, flooring, guy ropes, pegs); and

(2) Does not include equipment such as heating, cooling, or lighting.

Subsystem means a functional grouping of items that combine to perform a major function within an end item, such as electrical power, altitude control, and propulsion.

■ 3. Amend section 225.7003–1 by—

■ a. Removing paragraphs (a) and (c);

■ b. Removing the paragraph (b) designation for the definition ''Automotive item''; and

■ c. Adding, in alphabetical order, the definitions of ''Alloy'', ''Commercial derivative military article'', ''Electronic component'', ''High performance magnet'', ''Produce'', ''Specialty metal'', and ''Steel''.

The additions read as follows:

225.7003–1 Definitions.

As used in this section—

Alloy means a metal consisting of a mixture of a basic metallic element and one or more metallic, or non-metallic, alloying elements.

(1) For alloys named by a single metallic element (*e.g.,* titanium alloy), it means that the alloy contains 50 percent or more of the named metal (by mass).

(2) If two metals are specified in the name (*e.g.,* nickel-iron alloy), those metals are the two predominant elements in the alloy, and together they constitute 50 percent or more of the alloy (by mass).

* * * * *

Commercial derivative military article means an item acquired by the Department of Defense that is or will be produced using the same production facilities, a common supply chain, and the same or similar production processes that are used for the production of articles predominantly used by the general public or by nongovernmental entities for purposes other than governmental purposes.

Electronic component means an item that operates by controlling the flow of electrons or other electrically charged particles in circuits, using interconnections of electrical devices such as resistors, inductors, capacitors, diodes, switches, transistors, or integrated circuits. The term does not include structural or mechanical parts of an assembly containing an electronic component and does not include any high performance magnets that may be used in the electronic component.

High performance magnet means a permanent magnet that obtains a majority of its magnetic properties from rare earth metals (such as samarium).

Produce means—

(1) Atomization;

(2) Sputtering; or

(3) Final consolidation of non-melt derived metal powders.

Specialty metal means—

(1) Steel—

(i) With a maximum alloy content exceeding one or more of the following limits: manganese, 1.65 percent; silicon, 0.60 percent; or copper, 0.60 percent; or

(ii) Containing more than 0.25 percent of any of the following elements:

aluminum, chromium, cobalt, molybdenum, nickel, niobium (columbium), titanium, tungsten, or vanadium;

(2) Metal alloys consisting of—

(i) Nickel or iron-nickel alloys that contain a total of alloying metals other than nickel and iron in excess of 10 percent; or

(ii) Cobalt alloys that contain a total of alloying metals other than cobalt and iron in excess of 10 percent;

(3) Titanium and titanium alloys; or

(4) Zirconium and zirconium alloys.

Steel means an iron alloy that includes between .02 and 2 percent carbon and may include other elements.

■ 4. Amend section 225.7003–3 by—

■ a. Revising paragraph (b)(5) introductory text; and

■ b. In paragraphs (b)(5)(ii) introductory text, (b)(5)(ii)(A) and (B) introductory text, (c)(2), (d) introductory text, (d)(1) and (2) introductory text, and (d)(2)(ii), removing ''USD(AT&L)'' wherever they appear and adding ''USD(A&S)'' in its place.

The revision reads as follows:

225.7003–3 Exceptions.

* * * * *

(b) * * *

(5) Specialty metal in any of the items listed in 225.7003–2 if the USD(A&S), or an official authorized in accordance with paragraph (b)(5)(i) of this section, determines that specialty metal melted or produced in the United States cannot be acquired as and when needed at a fair and reasonable price in a satisfactory quality, a sufficient quantity, and the required form (*i.e.,* a domestic nonavailability determination). In accordance with 10 U.S.C. 2533b(m)(4), the term ''required form'' in this section refers to the form of the mill product, such as bar, billet, wire, slab, plate, or sheet, in the grade appropriate for the production of a finished end item to be delivered to the Government under this contract; or a finished component assembled into an end item to be delivered to the Government under the contract. See guidance in PGI 225.7003–3(b)(5).

* * * * *

■ 5. Amend section 225.7018–1 by–

■ a. Redesignating the definitions of ''Covered country'' and ''Covered material'' in alphabetical order; and

■ b. Adding, in alphabetical order, the definitions of ''Electronic device'' and ''Tungsten heavy alloy''.

The additions read as follows:

225.7018–1 Definitions.

* * * * *

Electronic device means an item that operates by controlling the flow of electrons or other electrically charged particles in circuits, using interconnections such as resistors, inductors, capacitors, diodes, switches, transistors, or integrated circuits.

Tungsten heavy alloy means a tungsten base pseudo alloy that—

(1) Meets the specifications of ASTM B777 or SAE–AMS–T–21014 for a particular class of tungsten heavy alloy; or

(2) Contains at least 90 percent tungsten in a matrix of other metals (such as nickel-iron or nickel-copper) and has density of at least 16.5 g/cm3).

■ 6. Amend section 225.7018–2 by—

■ a. Redesignating paragraphs (b)(1) and (2) as (b)(i) and (ii);

■ b. Redesignating paragraph (b) introductory text as paragraph (b)(1);

■ c. Redesignating paragraph (c) as paragraph (b)(2); and

■ d. Adding a new paragraph (c).

The addition reads as follows:

225.7018–2 Restriction.

* * * * *

(c) For production of tungsten metal powder and tungsten heavy alloy, this restriction includes—

(1) Atomization;

(2) Calcination and reduction into powder;

(3) Final consolidation of non-melt derived metal powders; and

(4) All subsequent phases of production of tungsten metal powder, tungsten heavy alloy, or any finished or semi-finished component containing tungsten heavy alloy.

■ 7. Amend section 225.7018–3 by—

■ a. Revising paragraph (c)(1) introductory text;

■ b. In paragraph (c)(1)(ii), removing ''had'' and adding ''has'' in its place;

■ c. Revising paragraph (c)(2); and

■ d. Revising paragraph (d).

The revisions read as follows:

225.7018–3 Exceptions.

* * * * *

(c) * * *

(1) A commercially available off-the-shelf item (but see PGI 225.7018–3(c)(1)(i) with regard to commercially available samarium-cobalt magnets), other than—

* * * * *

(2) An electronic device, unless the Secretary of Defense, upon the recommendation of the Strategic Materials Protection Board pursuant to 10 U.S.C. 187 determines that the domestic availability of a particular electronic device is critical to national security (but see PGI 225.7018–3(c)(1)(ii) with regard to samarium-cobalt magnets used in electronic components); or

* * * * *

(d) If the authorized agency official concerned determines that compliant covered materials of satisfactory quality and quantity, in the required form, cannot be procured as and when needed at a reasonable price.

(1) For tungsten heavy alloy, the term ''required form'' refers to the form of the mill product, such as bar, billet, wire, slab, plate, or sheet, in the grade appropriate for the production of a finished end item to be delivered to the Government under this contract; or a finished component assembled into an end item to be delivered to the Government under the contract.

(2) For samarium-cobalt magnets or neodymium-iron-boron magnets, the term ''required form'' refers to the form and properties of the magnets.

■ 8. Amend section 225.7018–4 by—

■ a. Revising paragraph (a)(1);

■ b. Removing paragraph (a)(3);

■ c. Redesignating paragraph (a)(4) as paragraph (a)(3); and

■ d. In the newly redesignated paragraph (a)(3), removing ''PGI 225.7018–4(a)(4)'' and adding ''PGI 225.7018–4(a)(3)'' in its place.

The revision reads as follows:

225.7018–4 Nonavailability determination.

(a) * * *

(1) The head of the contracting activity is authorized to make a nonavailability determination described in 225.7018–3(d) on an individual basis (*i.e.,* applies to only one contract).

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 9. Amend section 252.225–7009 by—

■ a. Removing the clause date ''(OCT 2014)'' and adding ''(DEC 2019)'' in its place;

■ b. In paragraph (a), removing the definition of ''Required form''; and

■ c. Revising paragraph (c)(5)(iii).

The revision reads as follows:

252.225–7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals.

* * * * *

(c) * * *

(5) * * *

(iii) The required form. In accordance with 10 U.S.C. 2533b(m)(4), the term ''required form'' in this clause refers to the form of the mill product, such as bar, billet, wire, slab, plate, or sheet, in the grade appropriate for the production of a finished end item to be delivered to the Government under this contract; or a finished component assembled into

an end item to be delivered to the Government under this contract.

* * * * *

■ 10. Amend section 252.225–7052 by—

■ a. Removing the clause date ''(APR 2019)'' and adding ''(DEC 2019)'' in its place;

■ b. In paragraph (a), redesignating the definitions of ''Covered country'' and ''Covered material'' in alphabetical order, and adding the definitions, in alphabetical order, of ''Assembly'', ''Commercially available off-the-shelf item'', ''Component'', Electronic device'', ''End item'', ''Subsystem'', and ''Tungsten heavy alloy'';

■ c. Redesignating paragraphs (b)(2)(i) and (ii) as (b)(2)(A) and (B);

■ d. Redesignating paragraph (b)(2) introductory text as (b)(2)(i);

■ e. Redesignating paragraph (b)(3) as paragraph (b)(2)(ii);

■ f. Adding a new paragraph (b)(3);

■ g. In paragraph (c)(1)(i)(B), removing ''had'' and adding ''has'' in its place;

■ h. Revising paragraph (c)(2); and

■ i. Adding a new paragraph (d).

The additions and revision read as follows:

252.225–7052 Restriction on the Acquisition of Certain Magnets and Tungsten.

* * * * *

(a) * * *

Assembly means an item forming a portion of a system or subsystem that—

(1) Can be provisioned and replaced as an entity; and

(2) Incorporates multiple, replaceable parts.

Commercially available off-the-shelf item—

(1) Means any item of supply that is—

(i) A commercial item (as defined in paragraph (1) of the definition of ''commercial item'' in section 2.101 of the Federal Acquisition Regulation);

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under this contract or a subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

Component means any item supplied to the Government as part of an end item or of another component.

* * * * *

Electronic device means an item that operates by controlling the flow of electrons or other electrically charged particles in circuits, using interconnections such as resistors, inductors, capacitors, diodes, switches, transistors, or integrated circuits.

End item means the final production product when assembled or completed and ready for delivery under a line item of this contract.

Subsystem means a functional grouping of items that combine to perform a major function within an end item, such as electrical power, attitude control, and propulsion.

Tungsten heavy alloy means a tungsten base pseudo alloy that—

(1) Meets the specifications of ASTM B777 or SAE–AMS–T–21014 for a particular class of tungsten heavy alloy; or

(2) Contains at least 90 percent tungsten in a matrix of other metals (such as nickel-iron or nickel-copper) and has density of at least 16.5 g/cm3).

(b) * * *

(3) For production of tungsten metal powder and tungsten heavy alloy, this restriction includes—

(i) Atomization;

(ii) Calcination and reduction into powder;

(iii) Final consolidation of non-melt derived metal powders; and

(iv) All subsequent phases of production of tungsten metal powder, tungsten heavy alloy, or any finished or semi-finished component containing tungsten heavy alloy.

(c) * * *

(2) If the authorized agency official concerned has made a nonavailability determination, in accordance with section 225.7018–4 of the Defense Federal Acquisition Regulation Supplement, that compliant covered materials of satisfactory quality and quantity, in the required form, cannot be procured as and when needed at a reasonable price.

(i) For tungsten heavy alloy, the term ''required form'' refers to the form of the mill product, such as bar, billet, wire, slab, plate, or sheet, in the grade appropriate for the production of a finished end item to be delivered to the Government under this contract; or a finished component assembled into an end item to be delivered to the Government under the contract.

(ii) For samarium-cobalt magnets or neodymium-iron-boron magnets, the term ''required form'' refers to the form and properties of the magnets.

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in subcontracts and other contractual instruments that are for items containing a covered material, including subcontracts and other contractual instruments for commercial items, unless an exception in paragraph (c) of this clause applies. The Contractor shall not alter this clause other than to identify the appropriate parties.

* * * * *

[FR Doc. 2019–27825 Filed 12–30–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 252

[Docket DARS–2019–0069]

RIN 0750–AK75

Defense Federal Acquisition Regulation Supplement: Trade Agreements Thresholds (DFARS Case 2019–D035)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to incorporate revised thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements, as determined by the United States Trade Representative.

DATES: Effective January 1, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Bass, 571–372–6174.

SUPPLEMENTARY INFORMATION:

I. Background

This rule adjusts thresholds for application of the World Trade Organization (WTO) Government Procurement Agreement (GPA) and Free Trade Agreements (FTA) as determined by the United States Trade Representative (USTR). The trade agreements thresholds are adjusted every two years according to predetermined formulae set forth in the agreements. The USTR has specified the following new thresholds (84 FR 70615, December 23, 2019):

Trade agreement	Supply contract (equal to or exceeding)	Construction contract (equal to or exceeding)
WTO GPA	$182,000	$7,008,000
FTAs:		
Australia FTA	83,099	7,008,000
Bahrain FTA	182,000	10,802,884
CAFTA–DR (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua)	83,099	7,088,000
Chile FTA	83,099	7,088,000
Columbia	83,099	7,088,000
Korea	100,000	7,008,000
Morocco FTA	182,000	7,008,000
NAFTA:		
—Canada	83,099	10,802,884
—Mexico	83,099	10,802,884
Panama FTA	182,000	7,008,000
Peru FTA	182,000	7,008,000
Singapore FTA	83,099	7,008,000

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is 41 U.S.C. 1707 entitled ''Publication of Proposed Regulations.'' Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it does not constitute a significant DFARS revision within the meaning of FAR 1.501–1 and does not have a significant cost or administrative impact on contractors or offerors. This final rule only adjusts the trade agreements thresholds according to predetermined formulae to adjust for changes in economic conditions, thus maintaining the status quo, without significant effect beyond the internal operating procedures of the Government.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule amends the DFARS to revise thresholds for application of the WTO GPA and the FTA. The revisions do not add any new burdens or impact applicability of clauses and provisions at or below the simplified acquisition threshold, or to commercial items.

IV. Executive Orders 12866 and 13563

Executive Order (E.O.) 12866, Regulatory Planning and Review, and E.O. 13563, Improving Regulation and Regulatory Review, direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, has determined that this is not a significant regulatory action as defined under section 3(f) of E.O. 12866 and, therefore, was not subject to review under section 6(b). This rule is not a major rule as defined at 5 U.S.C. 804(2).

V. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant FAR revision within the meaning of FAR 1.501–1, and 41 U.S.C. 1707 and does not require publication for public comment.

VII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C chapter 35) does apply, because the final rule affects the prescriptions for use of the certification and information collection requirements in the provision at DFARS 252.225–7035, Buy American—Free Trade Agreements-Balance of Payments Program Certificate, and the certification and information collection requirements in the provision at DFARS 252.225–7018, Photovoltaic Devices—Certificate. The changes to these DFARS clauses do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 0704–0229, entitled ''DFARS Part 225, Foreign Acquisition and related clauses,'' because the threshold changes are in line with inflation and maintain the status quo.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 225 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 225—FOREIGN ACQUISITION

225.1101 [Amended]

■ 2. Amend section 225.1101 by—

■ a. In paragraph (6) introductory text, removing ''$180,000'' and adding ''$182,000'' in its place;

■ b. In paragraph (10)(i) introductory text, removing ''$180,000'' and adding ''$182,000'' in its place;

■ c. In paragraph (10)(i)(A), removing ''$180,000'' and adding ''$182,000'' in its place;

■ d. In paragraph (10)(i)(B), removing ''$80,317'' and adding ''$83,099'' in its place;

■ e. In paragraph (10)(i)(C), removing ''$180,000'' and adding ''$182,000'' in its place; and
■ f. In paragraphs (10)(i)(D) through (F), removing ''$80,317'' wherever it appears and adding ''$83,099'' in its place.

225.7017–3 [Amended]

■ 3. Amend section 225.7017–3, in paragraph (b), by removing ''$180,000'' and adding ''$182,000'' in its place.

225.7503 [Amended]

■ 4. Amend section 225.7503 by—
■ a. In paragraphs (a) and (b) introductory text, removing ''$6,932,000'' and adding ''$7,008,000'' in both places;
■ b. In paragraph (b)(1), removing ''$10,441,216'' and adding ''$10,802,884'' in its place;
■ c. In paragraph (b)(2), removing ''$6,932,000'' and adding ''$7,008,000'' in its place, and removing ''$10,441,216'' and adding ''$10,802,884'' in its place;
■ d. In paragraph (b)(3), removing ''$10,441,216'' and adding ''$10,802,884'' in its place; and
■ e. In paragraph (b)(4), removing ''$6,932,000'' and adding ''$7,008,000'' in its place, and removing ''$10,441,216'' and adding ''$10,802,884'' in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225–7017 [Amended]

■ 5. Amend section 252.225–7017 by—
■ a. Removing clause date ''(AUG 2019)'' and adding ''(JAN 2020)'' in its place;
■ b. In paragraphs (c)(2) and (3), removing ''$80,317'' and adding ''$83,099'' in its place; and
■ c. In paragraphs (c)(4) and (5), removing ''$180,000'' and adding ''$182,000'' in its place.

252.225–7018 [Amended]

■ 6. Amend section 252.225–7018 by—
■ a. Removing clause date ''(DEC 2018)'' and adding ''(JAN 2020)'' in its place;
■ b. In paragraph (b)(1) introductory text, removing ''$180,000'' and adding ''$182,000'' in its place;
■ c. In paragraph (b)(2), removing ''$180,000'' and adding ''$182,000'' in its place;
■ d. In paragraphs (d)(3) and (4) introductory text, removing ''$80,317'' and adding ''$83,099'' in both places; and
■ e. In paragraphs (d)(5) and (6) introductory text, removing ''$180,000'' and adding ''$182,000'' in both places.

[FR Doc. 2019–27828 Filed 12–30–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 244

[Docket DARS–2019–0024]

RIN 0750–AJ48

Defense Federal Acquisition Regulation Supplement: Contractor Purchasing System Review Threshold (DFARS Case 2017–D038)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to establish a DoD contractor purchasing system review dollar threshold that provides a regulatory basis for allowing DoD personnel to support other essential priorities and missions of greater contractual risk, while reducing regulatory impact on contractors.

DATES: Effective December 31, 2019.

FOR FURTHER INFORMATION CONTACT: Kimberly Ziegler, telephone 571–372–6095.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 84 FR 25228 on May 31, 2019, proposing to amend the DFARS to implement a recommendation from the Defense Contract Management Agency (DCMA) to raise the contractor purchasing system review (CPSR) threshold at Federal Acquisition Regulation (FAR) 44.302(a) from $25 million to $50 million. Currently, FAR 44.302(a) requires the administrative contracting officer (ACO) to determine whether a contractor's sales to the Government are expected to exceed $25 million during the next 12 months and, if so, perform a review to determine if a CPSR is needed. The ACO uses this dollar threshold in conjunction with the surveillance criteria cited at FAR 44.302(a), *i.e.,* contractor past performance, and the volume, complexity, and dollar value of subcontracts, to make this determination. DCMA performs the preponderance of DoD CPSRs. Competitively awarded firm-fixed-price and competitively awarded fixed-price with economic price adjustment contracts and sales of commercial items pursuant to part 12 of the FAR are excluded from this requirement.

FAR 44.302(a) specifically authorizes the head of the agency responsible for contract administration to raise or lower the $25 million CPSR threshold if it is considered to be in the Government's best interest. The dollar threshold of $25 million cited at FAR 44.302(a) has been unchanged since 1996. In 2016, the DCMA CPSR Group conducted an analysis to determine if raising the CPSR threshold would be beneficial. Based on the Group's findings, it was determined that adjusting the threshold upward to $50 million would appropriately account for inflation, reduce burden on small contractors, and allow a more efficient and effective use of CPSR resources to review larger contractors where more taxpayer dollars are at risk. Three respondents submitted public comments in response to the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comments in the development of the final rule.

A. Summary of Significant Changes From the Proposed Rule

There are no changes made to the final rule as a result of the public comments.

B. Analysis of Public Comments

1. Support for the Rule

Comment: Two respondents conveyed overall support for the rule, but one respondent stated the support for the rule was contingent on DoD ensuring procurements valued at $50 million or below will not require the contractor to have or maintain an approved purchasing system per the clause at DFARS 252.242–7005, Contractor Business Systems.

Response: FAR clause 52.244–2, Subcontracts, allows the contracting officer to assess whether a system review is needed (*e.g.,* when meeting the $50 million threshold is anticipated). DFARS 252.244–7001, Contractor Purchasing System Administration, establishes the review criteria. Contractors whose sales have not reached the $50 million threshold may opt to allow their approval to expire rather than incur the costs to maintain a system that meets the criteria for an approved system. If an approved purchasing system is necessary to support a particular program, the contractor can work with the contracting officer to obtain a purchasing system review based on risk or pressing need. Otherwise, the contractor can request consent to subcontract in accordance with FAR 52.244–2.

2. Assessment of Risk

Comment: One respondent conveyed concerns that smaller contractors with fewer and lower dollar value contracts can create greater risks than contractors with larger dollar value contracts due to the availability of financial resources.

Response: There is no evidence that contractors with lower sales are inherently more risky than those with higher sales. The $25 million threshold established by FAR 44.302(a) has not changed since 1996. Analysis shows that the threshold could be raised to $50 million with consideration given to inflation and acceptable risk. Consistent with Better Buying Power (BBP) 3.0, raising the CPSR threshold is intended reduce the administrative burden on smaller contractors. Smaller contractors are often exempt from many of the CPSR review elements as a result of the recent increase to the threshold for obtaining certified cost or pricing data.

Comment: One respondent recommended reevaluating the risk-based assessment approach that DCMA employs to assess which contractors to review in a given year because contractors currently exceeding the threshold should not have latent undiscovered weaknesses in their purchasing systems. Based upon this assumption, the increased threshold would have no significant impact upon those purchasing systems.

Response: Risk assessments on approved systems are used by DCMA to prioritize one approved system over another and are used to schedule reviews. New entries (initial reviews) are worked into the existing schedule.

3. FAR 52.244–2, Subcontracts, and DFARS 252.244–7001, Contractor Purchasing System Administration

Comment: One respondent recommended revising the requirement for inclusion of the clause at FAR 52.244–2, Subcontracts, and the clause at DFARS 252.244–7001, Contractor Purchasing System Administration, and permit contracting officers to omit both clauses from applicable contracts if a CPSR will not be performed.

Response: The contracting officer inserts the FAR clause 52.244–2, Subcontracts, when flexibly priced contracts are anticipated, thus setting the stage for a contractor to submit requests for consent to subcontract. If a contractor's sales to the Government (excluding competitively awarded firm-fixed-price and competitively awarded fixed-price with economic price adjustment contracts and sales of commercial items pursuant to part 12) are expected to exceed $50 million during the next 12 months, the contracting officer will perform a review to determine if a CPSR is needed. In evaluating the acceptability of the contractor's purchasing system, the contracting officer, in consultation with the purchasing system analyst or auditor, determines whether the contractor's purchasing system complies with the system criteria for an acceptable purchasing system as prescribed in the clause at 252.244–7001, Contractor Purchasing System Administration. CPSR approval can be viewed to lighten the consent to subcontract burden on both the contractor and contracting officer. If the contracting officer determines that an approved system is not in the best interests of the Government, then they can choose not to initiate a review and continue with consent packages and annual contracting officer surveillance. The criteria found at DFARS 252.244–7001 can be used by contracting officers, in addition to those found in FAR 52.244–2, when conducting annual surveillance of a contractor without an approved system when the clause is present in prime contracts.

4. Initial Regulatory Flexibility Analysis (IRFA)

Comment: One respondent inquired if the data in the IRFA for DCMA CPSRs included all of the military departments and defense agencies.

Response: See section VI of this preamble.

5. Small Business Impacts

Comment: One respondent conveyed concerns that many solicitations require as a responsive element of bidding that the contractor demonstrate that it has a current approved purchasing system. The respondent further stated that contractors meeting the threshold for CPSRs will meet that test, however, those that are no longer required to maintain and receive CPSRs will not. As a result, the respondent recommends that DoD consider the potential implications for small businesses and on competition for cost-reimbursement or certain indefinite delivery indefinite quantity contracts from the CPSR threshold change when developing contract requirements in the future.

Response: If an approved purchasing system is necessary to support a particular program, the contractor can work with the contracting officer to obtain a purchasing system review based on risk or pressing need. Otherwise, the contractor can request consent to subcontract in accordance with the clause at FAR 52.244–2.

6. Out of Scope

Comment: One respondent questioned the mechanism to be used to provide oversight of cybersecurity compliance if an entity no longer meets the threshold for a CPSR.

Response: This comment is out of scope of this rule.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule does not add any new provisions or clauses or impact any existing provisions or clauses. The rule merely increases the DoD dollar threshold for conducting CPSRs from $25 million to $50 million.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This final rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

VI. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 604, *et seq.* The FRFA is summarized as follows:

DoD is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to establish a DoD contractor purchasing system review (CPSR) dollar threshold. This rule creates a new DFARS section at 244.302 to establish a CPSR dollar threshold of $50 million. The threshold will be used in conjunction with other surveillance criteria cited at Federal Acquisition Regulation (FAR) 44.302(a), to include contractor past performance and the volume, complexity, and dollar value of subcontracts. The rule establishes a DoD

dollar threshold of $50 million for a formal CPSR; in effect, raising the current surveillance threshold of $25 million cited at FAR 44.302(a) for DoD contractors.

One respondent submitted a public comment in response to the initial regulatory flexibility analysis (IRFA) which is summarized as follows:

Comment: The respondent inquired if the data in the IRFA for DCMA CPSRs included all of the military departments and defense agencies.

Reponse: The data included all CPSRs across all of the Department of Defense. The Government sales include all Government contracts/subcontracts (to include military departments and defense agencies) minus those competitively awarded firm-fixed-price, competitively awarded fixed-price with economic price adjustment contracts, or sales of commercial items pursuant to FAR part 12.

In 2014, there were 667 unique entities for which administrative contracting officers (ACO) had recorded approved CPSR decisions in the Contract Business Analysis Repository. A 20% reduction in the number of CPSRs is expected to result from increasing the CPSR threshold from $25 million to $50 million for a total reduction of approximately 133 firms no longer meeting the criteria for a CPSR review. Contractor purchasing systems are eligible for a comprehensive follow-on review every three years. Based on this three-year review cycle, approximately 45 fewer contractors would be reviewed each year (133 firms/3-year cycle = 44.3, rounded to 45 fewer reviews conducted each year). Of the 45 entities, it is estimated that 35 of these contractors are large businesses and 10 are small entities.

The $50 million dollar threshold should reduce the compliance burden for approximately 133 contractors, and permit a more prudent and efficient use of resources, prioritizing surveillance to the larger firms.

For the approximately 133 contractors affected by this rule, there could be additional requirements for those firms to request consent to contract from the ACO, pursuant to the clause at FAR 52.244–2, Subcontracts. It is estimated that the annual number of consent to contract requests are approximately 12 per contractor.

There are no known significant alternative approaches to the rule that would accomplish the stated objectives.

VII. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. Chapter 35) applies. The rule contains information collection requirements. The Office of Management and Budget (OMB) has previously cleared the information collection requirements affected by this rule under OMB Control Number 9000–0132, Contractors' Purchasing System Review, and 9000–0149, Subcontract Consent. These two clearances have been consolidated; the updated clearance reflecting the new DoD CPSR threshold has been cleared by OMB under 9000–0149, entitled ''Subcontract Consent and Contractor's Purchasing System Review'' through February 28, 2022.

List of Subjects in 48 CFR Part 244

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR part 244 is amended as follows:

PART 244—SUBCONTRACTING POLICIES AND PROCEDURES

■ 1. The authority citation for 48 CFR part 244 continues to read as follows:

Authority: 41 U.S.C. and 48 CFR chapter 1.

■ 2. Section 244.302 is added to read as follows:

244.302 Requirements.

(a) In lieu of the threshold at FAR 44.302(a), the ACO shall determine the need for a CPSR if a contractor's sales to the Government are expected to exceed $50 million during the next 12 months.

[FR Doc. 2019–27823 Filed 12–30–19; 8:45 am]

BILLING CODE 5001–06–P

Proposed Rules

Federal Register

Vol. 84, No. 250

Tuesday, December 31, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AN94

Prevailing Rate Systems; Definition of Pitt County, North Carolina, to a Nonappropriated Fund Federal Wage System Wage Area

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a proposed rule that would define Pitt County, North Carolina, as an area of application county to the Wayne, NC, nonappropriated fund (NAF) Federal Wage System (FWS) wage area. This change is necessary because there is one NAF FWS employee working in Pitt County, and the county is not currently defined to a NAF wage area.

DATES: Send comments on or before January 30, 2020.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by the following method:

- *Federal Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

All submissions received must include the agency name and docket number or RIN for this document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, by telephone at (202) 606–2858 or by email at *pay-leave-policy@opm.gov*.

SUPPLEMENTARY INFORMATION: OPM is issuing a proposed rule that would define Pitt County, NC, as an area of application to the Wayne, NC, NAF FWS wage area. The Department of Veterans Affairs notified OPM that the Veterans Canteen Service now has one NAF FWS employee in Pitt County.

Under section 532.219 of title 5, Code of Federal Regulations, each NAF wage area ''shall consist of one or more survey areas, along with nonsurvey areas, if any, having nonappropriated fund employees.'' Pitt County does not meet the regulatory criteria under 5 CFR 532.219 to be established as a separate NAF wage area; however, nonsurvey counties may be combined with a survey area to form a wage area. Section 532.219 lists the regulatory criteria that OPM considers when defining FWS wage area boundaries. This regulation allows consideration of the following criteria: Proximity of largest activity in each county, transportation facilities and commuting patterns, and similarities of the counties in overall population, private employment in major industry categories, and kinds and sizes of private industrial establishments.

Pitt County, NC, would be defined as an area of application to the Wayne, NC, NAF FWS wage area. The proximity criterion favors the Wayne wage area. The transportation facilities and commuting patterns criterion does not favor one wage area more than another. The overall population, employment sizes, and kinds and sizes of private industrial establishments criterion does not favor one wage area more than another. While a standard review of regulatory criteria shows mixed results, the proximity criterion favors the Wayne wage area. Based on this analysis, we propose that Pitt County be defined to the Wayne NAF wage area.

With the definition of Pitt County to the Wayne NAF wage area, the Wayne wage area would consist of one survey county (Wayne County, NC) and two area of application counties (Halifax and Pitt Counties, NC). The Federal Prevailing Rate Advisory Committee, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, made a majority recommendation to define Pitt County to the Wayne NAF wage area. This change would be effective on the first day of the first applicable pay period beginning on or after 30 days following publication of the final regulations.

Regulatory Impact Analysis

This action is not a ''significant regulatory action'' under the terms of Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under E.O. 12866 and 13563 (76 FR 3821, January 21, 2011).

Reducing Regulation and Controlling Regulatory Costs

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

Regulatory Flexibility Act

OPM certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles and responsibilities of State, local, or tribal governments.

Civil Justice Reform

This regulation meets the applicable standard set forth in Executive Order 12988.

Unfunded Mandates Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This action pertains to agency management, personnel, and organization and does not substantially affect the rights or obligations of nonagency parties and, accordingly, is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business ''Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping

requirements subject to the Paperwork Reduction Act.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs.

Accordingly, OPM is proposing to amend 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

■ 2. In Appendix D to subpart B amend the table by revising the wage area listing for the State of North Carolina to read as follows:

Appendix D to Subpart B of Part 532—Nonappropriated Fund Wage and Survey Areas

DEFINITIONS OF WAGE AREAS AND WAGE AREA SURVEY AREAS

* * * * *

NORTH CAROLINA

Craven

Survey Area

North Carolina:
Craven

Area of Application. Survey area plus:

North Carolina:
Carteret
Dare

Cumberland

Survey Area

North Carolina:
Cumberland

Area of Application. Survey area plus:

North Carolina:
Durham
Forsyth
Rowan

Onslow

Survey area

North Carolina:
Onslow

Area of Application. Survey area plus:

North Carolina:
New Hanover

Wayne

Survey area

North Carolina:
Wayne

Area of Application. Survey area plus:

North Carolina:
Halifax
Pitt

* * * * *

[FR Doc. 2019–28007 Filed 12–30–19; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0991; Product Identifier 2019–NM–179–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2016–16–09 and AD 2019–03–20, which apply to Dassault Aviation Model FALCON 7X airplanes. Those ADs require revising the existing maintenance or inspection program, as applicable, to incorporate new and more restrictive maintenance requirements and airworthiness limitations for airplane structures and systems. Since the FAA issued AD 2019–03–20, the FAA has determined that new or more restrictive airworthiness limitations are necessary. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which will be incorporated by reference. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by February 14, 2020.

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

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

For the material identified in this proposed AD that will be incorporated by reference (IBR), contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu*; internet *www.easa.europa.eu*. You may find this IBR material on the EASA website at *https://ad.easa.europa.eu*. You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0991.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0991; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: 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

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0991; Product Identifier 2019–NM–179–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM based on those comments.

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

Discussion

The FAA issued AD 2019–03–20, Amendment 39–19572 (84 FR 6059, February 26, 2019) (''AD 2019–03–20''), which applied to certain Dassault Aviation Model FALCON 7X airplanes. AD 2019–03–20 requires revising the existing maintenance or inspection program, as applicable, to incorporate new and more restrictive maintenance requirements and airworthiness limitations for airplane structures and systems. The FAA issued AD 2019–03–20 to address reduced structural integrity and reduced control of airplanes due to the failure of system components.

AD 2019–03–20 specifies that accomplishing the revision required by paragraph (g) of that AD terminates all requirements of AD 2016–16–09, Amendment 39–18607 (81 FR 52752, August 10, 2016). AD 2019–03–20 also specifies that accomplishing the revisions required by paragraph (g) of that AD terminates the requirements of paragraph (q) of AD 2014–16–23, Amendment 39–17947 (79 FR 52545, September 4, 2014); that provision is part of this proposed AD.

Actions Since AD 2019–03–20 Was Issued

Since the FAA issued AD 2019–03–20, the FAA has determined that new or more restrictive airworthiness limitations are necessary.

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0257, dated October 17, 2019 (''EASA AD 2019–0257'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Dassault Aviation Model FALCON 7X airplanes. EASA AD 2019–0257 supersedes EASA AD 2018–0277, dated December 17, 2018, which in turn superseded EASA AD 2018–0101, dated May 3, 2018 (FAA AD 2019–03–20 corresponds to EASA AD 2018–0101).

Airplanes with an original airworthiness certificate or original export certificate of airworthiness issued after June 1, 2019, must comply with the airworthiness limitations specified as part of the approved type design and referenced on the type certificate data sheet; this proposed AD therefore does not include those airplanes in the applicability.

This proposed AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is proposing this AD to address reduced structural integrity and reduced control of airplanes due to the failure of system components. See the MCAI for additional background information.

Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0257 describes new or more restrictive maintenance airworthiness limitations for airplane structures and systems.

This AD would also require Chapter 5–40–00, Airworthiness Limitations, DGT 107838, Revision 7, dated August 24, 2018, of the Dassault Falcon 7X Maintenance Manual (MM), which the Director of the Federal Register approved for incorporation by reference as of April 2, 2019 (84 FR 6059, February 26, 2019).

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

FAA's Determination and Requirements of This Proposed AD

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

Proposed AD Requirements

This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, which are specified in EASA AD 2019–0257, described previously, as incorporated by reference. Any differences with EASA AD 2019–0257 are identified as exceptions in the regulatory text of this proposed AD.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections) and Critical Design Configuration Control Limitations (CDCCLs). Compliance with these actions and CDCCLs is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (m)(1) of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA AD 2019–0257 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2019–0257 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in the EASA AD.

Service information specified in EASA AD 2019–0257 that is required for compliance with EASA AD 2019–0257 will be available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0992 after the FAA final rule is published.

Airworthiness Limitation ADs Using the New Process

The FAA's new process, which uses MCAI ADs as the primary source of information for compliance with corresponding FAA ADs, has been limited to certain MCAI ADs (primarily those with service bulletins as the primary source of information for accomplishing the actions required by the FAA AD). However, the FAA is now expanding the process to include MCAI ADs that specify the incorporation of airworthiness limitation documents.

Although the format of the airworthiness limitation ADs using the new process is different than the FAA's existing format for airworthiness limitation ADs, the FAA requirements are the same: Operators must revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in the new airworthiness limitation document.

The previous format of the airworthiness limitation ADs included a paragraph that specified that no alternative actions (*e.g.,* inspections), intervals, or CDCCLs may be used unless the actions, intervals, and CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in the AMOCs paragraph under ''Other FAA Provisions.'' This new format includes a ''New Provisions for Alternative Actions, Intervals, and CDCCLs'' paragraph that does not specifically refer to AMOCs, but operators may still request an AMOC to use an alternative action, interval, or CDCCL.

Costs of Compliance

The FAA estimates that this proposed AD affects 67 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

The FAA estimates the total cost per operator for the retained actions from AD 2019–03–20 to be $7,650 (90 work-hours × $85 per work-hour).

The FAA has determined that revising the maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. In the past, the agency has estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. The FAA estimates the total cost per operator for the new proposed actions to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2016–16–09, Amendment 39–18607 (81 FR 52752, August 10, 2016), and AD 2019–03–20, Amendment 39–19572 (84 FR 6059, February 26, 2019), and adding the following new AD:

Dassault Aviation: Docket No. FAA–2019–0991; Product Identifier 2019–NM–179–AD.

(a) Comments Due Date

The FAA must receive comments by February 14, 2020.

(b) Affected ADs

(1) This AD replaces AD 2016–16–09, Amendment 39–18607 (81 FR 52752, August 10, 2016) and AD 2019–03–20, Amendment 39–19572 (84 FR 6059, February 26, 2019) (''AD 2019–03–20'').

(2) This AD affects AD 2014–16–23, Amendment 39–17947 (79 FR 52545, September 4, 2014) (''AD 2014–16–23'').

(c) Applicability

This AD applies to Dassault Aviation Model FALCON 7X airplanes, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before June 1, 2019.

Note 1 to paragraph (c): Model FALCON 7X airplanes with modifications M1000 and M1254 incorporated are commonly referred to as ''Model FALCON 8X'' airplanes as a marketing designation.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address reduced structural integrity and reduced control of airplanes due to the failure of system components.

(f) Compliance

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

(g) Retained Maintenance or Inspection Program Revision, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2019–03–20, with no changes. Within 90 days after April 2, 2019 (the effective date of AD 2019–03–20), revise the existing maintenance or inspection program, as applicable, by incorporating the information specified in Chapter 5–40–00, Airworthiness Limitations, DGT 107838, Revision 7, dated August 24, 2018, of the Dassault Falcon 7X Maintenance Manual (MM). The initial compliance times for the tasks specified in Chapter 5–40–00, Airworthiness Limitations, DGT 107838, Revision 7, dated August 24, 2018, of the Dassault Falcon 7X MM are at the applicable compliance times specified in Chapter 5–40–00, Airworthiness Limitations, DGT 107838, Revision 7, dated August 24, 2018, of the Dassault Falcon 7X MM, or within 90 days after April 2, 2019, whichever occurs later. Accomplishing the maintenance or inspection program revision required by paragraph (i) of this AD terminates the requirements of this paragraph.

(h) Retained No Alternative Actions, Intervals, or Critical Design Configuration Control Limitations (CDCCLs), With a New Exception

This paragraph restates the requirements of paragraph (i) of AD 2019–03–20, with a new exception. Except as required by paragraph (i) of this AD, after the maintenance or inspection program, as applicable, has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections), intervals, or CDCCLs may be used unless the actions, intervals, and CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (m)(1) of this AD.

(i) New Maintenance or Inspection Program Revision

Except as specified in paragraph (j) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2019–0257, dated October 17, 2019 (''EASA AD 2019–0257''). Accomplishing the maintenance or inspection program revision required by this paragraph terminates the requirements of paragraph (g) of this AD.

(j) Exceptions to EASA AD 2019–0257

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2019–0257 do not apply to this AD.

(2) Where paragraph (3) of EASA AD 2019–0257 specifies a compliance time of ''Within 12 months'' after its effective date to ''revise the approved AMP [Aircraft Maintenance Program],'' this AD requires ''revising the existing maintenance or inspection program, as applicable'' to incorporate the ''limitations, tasks and associated thresholds and intervals'' specified in paragraph (3) of EASA AD 2019–0257 within 90 days after the effective date of this AD.

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2019–0257 is at the applicable ''associated thresholds'' specified in paragraph (3) of EASA AD 2019–0257, or within 90 days after the effective date of this AD, whichever occurs later.

(4) The provisions specified in paragraphs (4) and (5) of EASA AD 2019–0257 do not apply to this AD.

(5) The ''Remarks'' section of EASA AD 2019–0257 does not apply to this AD.

(k) New Provisions for Alternative Actions, Intervals, and CDCCLs

After the maintenance or inspection program has been revised as required by paragraph (i) of this AD, no alternative actions (*e.g.,* inspections), intervals, and CDCCLs are allowed except as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2019–0257.

(l) Terminating Action for Certain Requirements in AD 2014–16–23

Accomplishing the actions required by paragraph (i) of this AD terminates the requirements of paragraph (q) of AD 2014–16–23.

(m) 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 (n)(2) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

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

(3) *Required for Compliance (RC)*: For any service information referenced in EASA AD 2019–0257 that contains RC procedures and tests: Except as required by paragraph (m)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(n) Related Information

(1) For information about EASA AD 2019–0257, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* Internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0992.

(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.

Issued in Des Moines, Washington, on December 12, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–27886 Filed 12–30–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2017–0404; Product Identifier 2015–SW–066–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters (Previously Eurocopter France)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2008–24–04 for Eurocopter France (now Airbus Helicopters) Model AS355E, AS355F, AS355F1, AS355F2, and AS355N helicopters. AD 2008–24–04 requires repetitively inspecting the lubricating pump and checking the magnetic chip detector plug (chip detector) and the main gearbox (MGB) oil-sight glass. Since the FAA issued AD 2008–24–04, Airbus Helicopters has developed an alteration of the MGB oil flow distribution that corrects the unsafe condition. This proposed AD would retain the requirements of AD 2008–24–04 and would allow the option of altering the MGB oil flow distribution as a terminating action for the inspections. The actions of this proposed AD are intended to address an unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by March 2, 2020.

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

- *Federal eRulemaking Docket:* Go to *https://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2017–0404; 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 proposed AD, the European Aviation Safety Agency (EASA) AD, the economic evaluation, any comments received and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed rule, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone 972–641–0000 or 800–232–0323; fax 972–641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html*.

You may view the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

FOR FURTHER INFORMATION CONTACT: Jignesh Patel, Aerospace Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy, Fort Worth, TX 76177; telephone 817–222–5110; email *jignesh.patel@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to participate in this rulemaking by submitting written comments, data, or views. The FAA also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments received on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The FAA may change this proposal in light of the comments received.

Discussion

The FAA issued AD 2008–24–04, Amendment 39–15744 (73 FR 71530, November 25, 2008) (''AD 2008–24–04'') for Eurocopter France (now Airbus Helicopters) Model AS355E, AS355F, AS355F1, AS355F2, and AS355N helicopters. AD 2008–24–04 requires repetitive checks of the chip detector and the MGB oil-sight glass and repetitive inspections of the lubricating pump. AD 2008–24–04 also requires replacing the MGB and pump with an airworthy MGB and pump if necessary. AD 2008–24–04 was prompted by cases of MGB lubricating pump deterioration. The actions of AD 2008–24–04 are intended to implement improved procedures to detect a failing MGB oil pump, prevent failure of the MGB oil pump, seizure of the MGB, loss of drive to an engine and main rotor, and subsequent loss of control of the helicopter.

Actions Since AD 2008–24–04 Was Issued

Since the FAA issued AD 2008–24–04, Airbus Helicopters has issued service information to provide procedures for Airbus Helicopters modification (MOD) 077222, which improves the distribution of the oil flow between the accessory modules of the combiner gearbox and the MGB. Subsequently, EASA, which is the Technical Agent for the Member States of the European Union, issued EASA AD No. 2007–0209R1, dated September 11, 2015. EASA advises that Airbus Helicopters MOD 077222 provides the same level of safety as the MGB pump inspections. Accordingly, the EASA AD applies to Airbus Helicopters Model AS355E, AS355F, AS355F1, AS355F2, and AS355N helicopters with a lubrication pump part number 355A32–0700–01, 355A32–0700–02, or 355A32–0701–00 installed, except those with Airbus Helicopters MOD 077222 installed, and requires repetitive MGB pump inspections and chip detector and MGB oil-sight glass checks, and allows MOD 077222 as optional terminating action for the repetitive inspections.

FAA's Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA of the unsafe condition described in its AD. The FAA is proposing this AD after evaluating all known relevant information and determining that an unsafe condition is likely to exist or develop on other helicopters of the same type designs.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Eurocopter Alert Service Bulletin (ASB) No. 05.00.51, Revision 0, dated July 9, 2007 (ASB 05.00.51 Rev 0), and Airbus Helicopters ASB No. 05.00.51, Revision 1, dated July 29, 2015. This service information contains procedures for monitoring the MGB oil pump for wear. Revision 1 of this service information omits helicopters with MOD 077222 installed.

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.

Other Related Service Information

The FAA reviewed Airbus Helicopters Service Bulletin No. AS355–63.00.25, Revision 1, dated July 29, 2015, and Revision 2, dated June 22, 2017. This service information contains procedures for altering the lubrication system to increase oil flow between the accessory modules of the combiner gearbox and the MGB. This service information also specifies using mineral oil 0–155 in the combiner gearbox instead of synthetic oil 0–156 after completing the alteration. Airbus Helicopters identifies this alteration as MOD 077222. Revision 2 of this service information clarifies a procedure and updates a work card.

The FAA also reviewed Eurocopter Emergency Alert Service Bulletin No. 05.00.40, Revision 3, dated July 9, 2007. This service information specifies inspecting the MGB magnetic plug for sludge and oil sight for color. If there is sludge or if the oil is dark or dark purple, this service information specifies removing the lubrication pump and inspecting it for certain conditions, and replacing it as necessary. Revision 3 of this service information informs operators that this service information is superseded by ASB 05.00.51 Rev 0.

Proposed AD Requirements

This proposed AD would retain the requirements of AD 2008–24–04 and add an option to alter the lubrication system (MOD 077222) as a terminating action for the repetitive inspections. For those helicopters that incorporate Mod 077222, using mineral oil 0–155 in the combiner gearbox instead of synthetic oil 0–156 would be required. This proposed AD would also exclude helicopters with MOD 077222 from the applicability.

An owner/operator (pilot) may perform the proposed visual checks and

must enter compliance with that paragraph into the helicopter maintenance records in accordance with Title 14 Code of Federal Regulations (14 CFR) §§ 43.9(a)(1) through (4) and 14 CFR 91.417(a)(2)(v). A pilot may perform this check because it involves only a visual check and can be performed equally well by a pilot or a mechanic. This check is an exception to the FAA's standard maintenance regulations.

Differences Between This Proposed AD and the EASA AD

The EASA AD requires that the initial and repetitive MGB oil inspections be conducted after the last flight of each day without exceeding 10 flight hours between two successive checks. This proposed AD would require those inspections before the first flight of each day and at intervals not to exceed 10 hours time-in-service.

Costs of Compliance

The FAA estimates that this proposed AD affects 46 helicopters of U.S. Registry. Labor costs are estimated at $85 per work-hour. Based on these numbers, the FAA estimates that operators may incur the following costs in order to comply with this AD.

- Checking the MGB oil and chip detector condition would take about 0.25 work-hour for an estimated cost of about $21 per helicopter and $966 for the U.S. fleet per check.
- Inspecting the lubricating pump would take about 1 work-hour for an estimated cost of $85 per helicopter and $3,910 for the U.S. fleet per inspection.
- Replacing the MGB and pump would take about 8 work-hours and cost about $64,000 (overhauled) in parts for an estimated cost of $64,680 per helicopter.
- Altering the lubrication system (optional MOD 077222) would take about 4 work-hours and cost about $2,335 in parts for an estimated cost of $2,675 per helicopter.

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866,
2. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction, and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

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 removing Airworthiness Directive (AD) 2008–24–04, Amendment 39–15744 (73 FR 71530, November 25, 2008), and adding the following new AD:

Airbus Helicopters (previously Eurocopter France): Docket No. FAA–2017–0404; Product Identifier 2015–SW–066–AD.

(a) Applicability

This AD applies to Airbus Helicopters (previously Eurocopter France) Model AS355E, AS355F, AS355F1, AS355F2, and AS355N helicopters, certificated in any category, with a main gearbox (MGB) lubrication pump (pump) part number 355A32–0700–01, 355A32–0700–02, or 355A32–0701–00, except helicopters with Modification (MOD) 077222 installed.

(b) Unsafe Condition

This AD defines the unsafe condition as insufficient lubrication within an MGB. This condition, if not detected and corrected, could result in failure of the MGB pump, seizure of the MGB, loss of drive to an engine and main rotor, and subsequent loss of helicopter control.

(c) Affected ADs

This AD replaces AD 2008–24–04, Amendment 39–15744 (73 FR 71530, November 25, 2008).

(d) Comments Due Date

The FAA must receive comments by March 2, 2020.

(e) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(f) Required Actions

(1) Before the first flight of each day and at intervals not to exceed 10 hours time-in-service (TIS), check the MGB magnetic chip detector plug (chip detector) for any sludge. Also, check for dark oil in the MGB oil-sight glass. The actions required by this paragraph may be performed by an owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with Title 14 Code of Federal Regulations (14 CFR) §§ 43.9 (a)(1) through (4) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439. ''Sludge'' is a deposit on the chip detector that is typically dark in color and in the form of a film or paste, as compared to metal chips or particles normally found on a chip detector. Sludge may have both metallic or nonmetallic properties, may consist of copper (pinion bearing), magnesium (pump case), and steel (pinion) from the oil pump, and a nonmetallic substance from the chemical breakdown of the oil as it interacts with the metal.

(i) Before further flight, if any sludge is found on the chip detector, remove, open, and inspect the pump.

(ii) Before further flight, if the oil appears dark in color when it is observed through the MGB oil-sight glass, take an oil sample. If the oil taken in the sample is dark or dark purple, before further flight, remove, open, and inspect the pump.

(2) Within 25 hours TIS, after operating both engines at normal operating revolutions per minute (RPM) for at least 20 minutes to ensure the MGB oil temperature has stabilized, inspect the oil pump for wear by following the Accomplishment Instructions, paragraph 2.B.2., steps 1. through 6., of Eurocopter Alert Service Bulletin (ASB) No. 05.00.51, Revision 0, dated July 9, 2007 (ASB 05.00.51 Rev 0), or Airbus Helicopters ASB

No. 05.00.51, Revision 1, dated July 29, 2015 (ASB 05.00.51 Rev 1).

(i) Record the outside air temperature (OAT) and rotor speed (NR RPM) and plot the point at which they intersect using the graph in Figure 1 or 2 of ASB 05.00.51 Rev 0 or ASB 05.00.51 Rev 1.

(ii) If the point on the graph at the intersection of the recorded OAT and the NR RPM falls within:

(A) Zone 3—Before further flight, replace the MGB and pump with an airworthy MGB and pump.

(B) Zone 2—At intervals not to exceed 25 hours TIS, repeat the inspection procedures by following the Accomplishment Instructions, paragraph 2.B.2, steps 1. through 6., of ASB 05.00.51 Rev 0 or ASB 05.00.51 Rev 1. After being classified in ''Zone 2,'' you must obtain two successive inspections separated by at least 24 hours TIS that fall within Zone 1 before you can begin to inspect at intervals not to exceed 110 hours TIS by following paragraph (f)(2)(ii)(C) of this AD for Zone 1.

(C) Zone 1—At intervals not to exceed 110 hours TIS, repeat the inspection procedures by following the Accomplishment Instructions, paragraph 2.B.2., steps 1. through 6., of ASB 05.00.51 Rev 0 or ASB 05.00.51 Rev 1.

(iii) Compliance with paragraphs (f)(2)(i) and (ii) of this AD constitutes terminating action for the checks and inspections required by paragraph (f)(1) of this AD.

(3) As an optional terminating action for the requirements in this AD, alter the lubrication system for the MGB in accordance with the Accomplishment Instructions, paragraphs 3.B.2.a. through 3.B.3 of Airbus Helicopters Service Bulletin No. AS355–63.00.25, Revision 1, dated July 29, 2015, or Revision 2, dated June 22, 2017. Mineral oil 0–155 is required after compliance with this alteration.

Note 1 to paragraph (f)(3) of this AD: Airbus Helicopters identifies alteration of the lubrication system as MOD 077222.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Section, Rotorcraft Standards Branch, FAA, may approve AMOCs for this AD. Send your proposal to: Jignesh Patel, Aerospace Engineer, Safety Management Section, Rotorcraft Standards Branch, FAA, 10101 Hillwood Pkwy, Fort Worth, TX 76177; telephone 817–222–5110; email *9-ASW-FTW-AMOC-Requests@faa.gov*.

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, the FAA suggests that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(h) Additional Information

(1) Airbus Helicopters Service Bulletin No. AS355–63.00.25, Revision 1, dated July 29, 2015, and Revision 2, dated June 22, 2017, and Eurocopter Emergency Alert Service Bulletin No. 05.00.40, Revision 3, dated July 9, 2007, which are not incorporated by reference, pertain to the subject of this AD. For service information identified in this AD, contact Airbus Helicopters, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone 972–641–0000 or 800–232–0323; fax 972–641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html*. You may view a copy of the service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177.

(2) The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2007–0209R1, dated September 11, 2015. You may view the EASA AD on the internet at *https://www.regulations.gov* in the AD Docket.

(i) Subject

Joint Aircraft Service Component (JASC) Code: 6320, Main Rotor Gearbox.

Issued in Fort Worth, Texas, on December 20, 2019.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2019–27978 Filed 12–30–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0537; Product Identifier 2019–NE–16–AD]

RIN 2120–AA64

Airworthiness Directives; Anjou Aeronautique Torso Restraint Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede airworthiness directive (AD) 2017–16–04 which applies to certain Anjou Aeronautique (formerly Romtex Anjou Aeronautique) Model 358 torso restraint systems (restraint systems). AD 2017–16–04 required inspection of the restraint system, placarding if it is found to be inoperative, and replacement of the affected restraint system with a part eligible for installation. Since the FAA issued AD 2017–16–04, the European Union Aviation Safety Agency (EASA) received reports of additional serial numbered restraint systems rotary buckle knobs (buckle knobs) breaking on a batch of parts outside of the previous population. This proposed AD would require the removal from service of this expanded population of affected restraint systems and modifies the compliance schedule for their removal. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by February 14, 2020.

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

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

For service information identified in this NPRM, contact Anjou Aeronautique, Strada Livezii nr. 98, 550042, Sibiu, Romania; telephone: +40 269 243 918; fax: +40 269 243 921; email: *seatbelts@anjouaero.com*. You may view this service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0537; 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 mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Dorie Resnik, Aerospace Engineer, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA, 01803; phone: 781–238–7693; fax: 781–238–7199; email: *dorie.resnik@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0537; Product Identifier 2019–NE–16–AD'' at

the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

Discussion

The FAA issued AD 2017–16–04, Amendment 39–18981 (82 FR 39355, August 18, 2017), (''AD 2017–16–04''), for Anjou Aeronautique restraint systems installed on, but not limited to, Airbus Helicopters Model AS350B2, AS350B3, EC130B4, EC130T2, and AS355NP helicopters. AD 2017–16–04 requires inspection of the restraint system, placarding if it is found to be inoperative, and replacement of the affected restraint system with a part eligible for installation. AD 2017–16–04 resulted from reports of a population of buckle knobs breaking due to the alteration of rotary buckle sub-assembly by a supplier of Anjou Aeronautique to a specification different from the approved design data. The FAA issued AD 2017–16–04 to prevent a restraint system from failing to release due to the buckle knobs breaking off, preventing occupants from exiting the helicopter during an emergency.

Actions Since AD 2017–16–04 Was Issued

Since the FAA issued AD 2017–16–04, EASA received reports of additional Anjou Aeronautique Model 358 buckle knobs breaking on a batch of parts affected by the same unsafe condition due to an unknown root cause. As a result, EASA issued AD 2018–0195, dated September 4, 2018, which identifies a population of the restraint systems to be removed from service.

Revision to Cost Estimate

The FAA determined the need to clarify the estimated cost in AD 2017–16–04. The cost reflected in AD 2017–16–04 is the total cost per helicopter ($6,000 per restraint system multiplied by 7 seats per helicopter totaling $42,000). In this AD, the FAA is providing the cost estimate per restraint system.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Anjou Aero Service Bulletin (SB) No. 358SB–14–101, Revision 1, dated December 12, 2014. The SB describes procedures for removing from service and replacing the rotary buckle sub-assembly on certain part-numbered and serial-numbered buckle assemblies, consisting of the rotary buckle, belt, and attachment. 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

The FAA is proposing this AD because it 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 retain certain requirements of AD 2017–16–04. This proposed AD expands the populations of affected restrains systems and modifies the compliance schedule for their removal.

Differences Between the Proposed AD and MCAI

EASA AD 2018–0195, dated September 4, 2018, requires replacement of the affected restraint system within six months after the effective date of the EASA AD. This proposed AD would require inspection of each restraint system within 30 hours time in service (TIS) after the effective date of the AD and replacement of the rotary buckle sub-assembly within 180 hours TIS after the effective date of this AD. Additionally, the EASA AD applies to restraint systems installed on, but not limited to, Airbus Helicopter AS350B2, AS350B3, and EC130T2 helicopters. This proposed AD would apply to restraint systems installed on, but not limited to, Airbus Helicopters AS350B2, AS350B3, EC130B4, EC130T2, and AS355NP helicopters.

Costs of Compliance

The FAA estimates that this proposed AD affects an unknown number of restraint systems installed on, but not limited to, Airbus Helicopters AS350B2, AS350B3, EC130B4, EC130T2, and AS355NP helicopters of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product
Inspect restraint system	0.5 work-hours × $85 per hour = $42.50	$0	$42.50
Remove and replace restraint system	0.5 work-hours × $85 per hour = $42.50	6,000	6,042.50

The FAA estimates the following costs to do any necessary placarding that would be required based on the results of the proposed inspection. The FAA has no way of determining the number of aircraft that might need this placarding:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Placard seat as inoperable	0.1 work-hour × $85 per hour = $8.50	$0	$8.50

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage for affected

individuals. As a result, the FAA has included all costs in its 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.

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2017–16–04, Amendment 39–18981 (82 FR 39355, August 18, 2017), and adding the following new AD:

Anjou Aeronautique (formerly Romtex Anjou Aeronautique): Docket No. FAA–2019–0537; Product Identifier 2019–NE–16–AD.

(a) Comments Due Date

The FAA must receive comments on this AD action by February 14, 2020.

(b) Affected ADs

This AD replaces AD 2017–16–04, Amendment 39–18981 (82 FR 39355, August 18, 2017).

(c) Applicability

(1) This AD applies to Anjou Aeronautique Model 358 torso restraint systems (restraint systems), part number (P/N) 358XX–XXX–YY–ZZZ (where 358XX–XXX–YY–ZZZ can be any combination of numbers and/or letters), with serial numbers (S/Ns) listed in Effectivity, paragraph 1.2, of Anjou Aero Service Bulletin (SB) No. 358SB–14–101, Revision 1, dated December 12, 2014, and with S/Ns listed in Figure 1 to Paragraph (c)(1) of this AD.

FIGURE 1 TO PARAGRAPH (c)(1)—APPLICABILITY

S/N (From . . . inclusive)	S/N (To . . . inclusive)
738	1037
1049	1049
1056	1061
1074	1619

(2) These restraint systems are installed on, but not limited to, Airbus Helicopters AS350B2, AS350B3, EC130B4, EC130T2, and AS355NP helicopters, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 2500, Cabin Equipment/Furnishings.

(e) Unsafe Condition

This AD was prompted by reports to the European Union Aviation Safety Agency (EASA) of additional restraint system buckle knobs, since the publication of AD 2017–16–04, breaking on a batch of parts outside of the population identified in AD 2017–16–04. The FAA is issuing this AD to prevent a restraint system strap from failing to release from the buckle, causing occupants to be unable to exit the aircraft during an emergency. The unsafe condition, if not addressed, could result in a restraint system strap failing to release from the buckle, resulting in injury or death of the occupant.

(f) Compliance

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

(g) Required Actions

(1) For the restraint systems listed in the Effectivity, paragraph 1.2, of Anjou Aero SB No. 358SB–14–101, Revision 1, dated December 12, 2014, except for S/Ns 1038–1048 (inclusive), 1050–1055 (inclusive), and 1062–1073 (inclusive), within 30 hours time-in-service (TIS) after the effective date of this AD, inspect each restraint system for proper release of the straps from the restraint system.

(i) If the straps do not release from the restraint system, before further flight, placard the seat as inoperative. Within 180 hours TIS after the effective date of this AD, remove the rotary buckle sub-assembly and replace it with a part eligible for installation.

(ii) If the straps release from the restraint system, within 180 hours TIS after the effective date of this AD, remove the rotary buckle sub-assembly and replace it with a part eligible for installation.

(2) For restraint systems, P/N 358XX–XXX–YY–ZZZ (where 358XX–XXX–YY–ZZZ can be any combination of numbers and/or letters), having S/Ns 738–1619 (inclusive), within 30 hours TIS after the effective date of this AD, inspect the restraint system for proper release of the straps from the restraint system.

(i) If the straps do not release from the restraint system, before further flight, placard the seat as inoperative and within 180 hours TIS after the effective date of this AD, remove the restraint system from service and replace it with a part eligible for installation.

(ii) If the straps release from the restraint system, within 180 hours TIS or six months after the effective date of this AD, whichever occurs first, remove the restraint system from service and replace it with a part eligible for installation.

(h) Installation Prohibition

After the effective date of this AD, do not install on any aircraft an Anjou Aeronautique restraint system, P/N 358XX–XXX–YY–ZZZ, having S/Ns 738–1619 (inclusive), even if the restraint system is labeled in compliance with Anjou Aero SB No. 358SB–14–101, Revision 1, dated December 12, 2014.

(i) Definition

For the purpose of this AD, a ''part eligible for installation'' is an Anjou Aeronautique restraint system, excluding P/N 358XX–XXX–YY–ZZZ, having S/Ns 738–1619 (inclusive), that had the rotary buckle sub-system repaired and a label attached indicating compliance with Anjou Aero SB No. 358SB–14–101, Revision 1, dated December 12, 2014, or later revisions.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Boston 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 (k)(1) of this AD.

(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.

(k) Related Information

(1) For more information about this AD, contact Dorie Resnik, Aerospace Engineer, Boston ACO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7693; fax: 781–238–7199; email: *dorie.resnik@faa.gov*.

(2) Refer to EASA AD 2018–0195, dated September 4, 2018, for more information. You may examine the EASA AD in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating it in Docket No. FAA–2019–0537.

(3) For service information identified in this AD, contact Anjou Aeronautique, Strada Livezii nr. 98, 550042, Sibiu, Romania; telephone: +40 269 243 918; fax: +40 269 243 921; email: *seatbelts@anjouaero.com*. You may view this referenced service information at the FAA, Engine and Propeller Standards Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7759.

Issued in Burlington, Massachusetts, on December 20, 2019.

Karen M. Grant,

Acting Manager, Engine & Propeller Standards Branch, Aircraft Certification Service.

[FR Doc. 2019–27939 Filed 12–30–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0990; Product Identifier 2019–NM–122–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes. This proposed AD was prompted by reports of cracks of the upper splice fittings. This proposed AD would require repetitive detailed inspections and open hole high frequency eddy current (HFEC) inspections of the upper splice fittings for cracks and applicable on-condition actions. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by February 14, 2020.

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

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

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com*. You may view this referenced 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. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0990.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0990; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Bill Ashforth, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3520; email: *bill.ashforth@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0990; Product Identifier 2019–NM–122–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

Discussion

The FAA has received reports of cracks of the upper splice fittings at station (STA) 2598. There have been a total of seven cracks reported on the upper splice fittings on six different airplanes. During accomplishment of Boeing Service Bulletin 747–53A2473, an operator reported a crack approximately 0.30 inches long at a fastener hole in the splice fitting at STA 2598. The crack was in the outboard flange at a location which is outside of the area inspected in accordance with Boeing Service Bulletin 747–53A2473. The airplane had accumulated 112,500 flight hours and 18,784 flight cycles when the crack was found. Ground spoiler buffet loading contributes significantly to maximum fatigue damage in the area. This condition, if not addressed, could result in undetected fatigue cracks of the bulkhead splice fitting, which could lead to failure in the critical attach structure and loss of the horizontal stabilizer, and adversely affect the structural integrity of the airplane.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 747–53A2899 RB, dated April 5, 2019. The service information describes procedures for repetitive detailed inspections and open

hole HFEC inspections of the left and right upper splice fittings for cracks and applicable on-condition actions. On-condition actions include repair.

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

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

Proposed AD Requirements

This proposed AD would require accomplishment of the actions identified in Boeing Alert Requirements Bulletin 747–53A2899 RB, dated April 5, 2019, described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

For information on the procedures and compliance times, see this service information at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0990.

Explanation of Requirements Bulletin

The FAA worked in conjunction with industry, under the Airworthiness Directive Implementation Aviation Rulemaking Committee (AD ARC), to enhance the AD system. One enhancement is a process for annotating which steps in the service information are ''required for compliance'' (RC) with an AD. Boeing has implemented this RC concept into Boeing service bulletins.

In an effort to further improve the quality of ADs and AD-related Boeing service information, a joint process improvement initiative was worked between the FAA and Boeing. The initiative resulted in the development of a new process in which the service information more clearly identifies the actions needed to address the unsafe condition in the ''Accomplishment Instructions.'' The new process results in a Boeing Requirements Bulletin, which contains only the actions needed to address the unsafe condition (*i.e.,* only the RC actions).

Costs of Compliance

The FAA estimates that this proposed AD affects 125 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Repetitive detailed inspections and open hole HFEC inspections.	5 work-hours × $85 per hour = $425 per inspection cycle.	$0	$425 per inspection cycle.	$53,125 per inspection cycle.

The FAA has received no definitive data that would enable the agency to provide cost estimates for the on-condition actions specified in this proposed AD.

Authority for This Rulemaking

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

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

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

Regulatory Findings

The FAA has determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2019–0990; Product Identifier 2019–NM–122–AD.

(a) Comments Due Date

The FAA must receive comments by February 14, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by reports of cracks of the upper splice fittings. The FAA is issuing this AD to address cracks of the upper splice fittings, which could result in undetected fatigue cracks of the bulkhead splice fitting, lead to failure in the critical attach structure and loss of the horizontal stabilizer, and adversely affect the structural integrity of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 747–53A2899 RB, dated April 5, 2019, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 747–53A2899 RB, dated April 5, 2019.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 747–53A2899, dated April 5, 2019, which is referred to in Boeing Alert Requirements Bulletin 747–53A2899 RB, dated April 5, 2019.

(h) Exceptions to Service Information Specifications

(1) For purposes of determining compliance with the requirements of this AD: Where Boeing Alert Requirements Bulletin 747–53A2899 RB, dated April 5, 2019, uses the phrase ''the original issue date of Requirements Bulletin 747–53A2899 RB,'' this AD requires using ''the effective date of this AD.''

(2) Where Boeing Alert Requirements Bulletin 747–53A2899 RB, dated April 5, 2019, specifies contacting Boeing for repair instructions: This AD requires doing the repair using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(i) 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 (j)(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 Company 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.

(j) Related Information

(1) For more information about this AD, contact Bill Ashforth, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3520; email: *bill.ashforth@faa.gov*.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com*. You may view this referenced 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 December 17, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–27929 Filed 12–30–19; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 37

RIN 3038–AE79

Post-Trade Name Give-Up on Swap Execution Facilities

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is proposing a rule to prohibit ''post-trade name give-up'' practices related to trading on swap execution facilities.

DATES: Comments must be received on or before March 2, 2020.

ADDRESSES: You may submit comments, identified by ''Post-Trade Name Give-Up on Swap Execution Facilities'' and RIN number 3038–AE79, by any of the following methods:

- *The Agency's Website: http://comments.cftc.gov*. Follow the instructions for submitting comments.
- *Mail:* Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail, above.

All comments must be submitted in English or, if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov*. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act,[1] a petition for confidential treatment of the exempt information may be submitted according to the procedures established in Commission Regulation 145.9.[2]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of this proposed rule will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Alexandros Stamoulis, Special Counsel, (646) 746–9792, *astamoulis@cftc.gov,* Division of Market Oversight, Commodity Futures Trading Commission, 140 Broadway, 19th Floor, New York, NY 10005.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission is proposing to amend part 37 of the Commission's regulations to prohibit ''post-trade name give-up'' practices for swaps that are anonymously executed on a SEF and are intended to be cleared. Proposed § 37.9(d) of the Commission's regulations would prohibit a SEF from directly or indirectly, including through a third-party service provider, disclosing the identity of a counterparty to a swap that is executed anonymously and intended to be cleared. The proposed regulation would also require SEFs to establish and enforce rules that prohibit any person from effectuating such a disclosure. The Commission is proposing this prohibition on post-trade name give-up after considering the comments received in response to its November 2018 request for public comment regarding the practice (the

[1] 5 U.S.C. 552.

[2] 17 CFR 145.9. Commission regulations referred to herein are found at 17 CFR chapter I.

''Name Give-Up Release'').[3] The Commission believes that prohibiting the practice of post-trade name give-up for cleared swaps would promote swaps trading and competition on SEFs, as well as promote fair competition among market participants. Additionally, it would advance the congressional objectives underlying the prohibition against swap data repositories disclosing the identity of cleared swap counterparties. The Commission also preliminarily believes that post-trade name give-up for cleared swaps may be inconsistent with the requirement that SEFs provide market participants with impartial access to trading on SEFs.

II. Background

The Commission issued the Name Give-Up Release to seek public comment on the practice of post-trade name give-up on SEFs for swaps intended to be cleared. As described in the release, some SEFs facilitate this practice by disclosing the identities of swap counterparties to one another after a trade is matched anonymously. A SEF may effectuate such disclosure through either its own trade protocols [4] or through a third-party service provider that it utilizes to process and route transactions to a derivatives clearing organization (''DCO'') for clearing.[5] Prior to the issuance of the Name Give-Up Release, the Commission had been aware of views that such disclosure deters some market participants from trading on SEF platforms that employ the practice. In the Name Give-Up Release, the Commission questioned the necessity of the practice with respect to cleared swaps that are anonymously executed on a SEF. While the Commission acknowledged that the practice may be necessary for trading in uncleared swaps, *i.e.,* to manage counterparty credit risk,[6] it stated that the rationale with respect to cleared swaps is ''less clear cut.'' [7] The Commission also summarized some of the general views on post-trade name give-up of various industry participants and requested public comment on the merits of the practice and whether the Commission should prohibit it.[8]

The Commission received thirteen comment letters to the Name Give-Up Release, many of which expounded further on the views summarized in the release.[9] The majority of commenters opposed the practice of post-trade name give-up for anonymously-executed swaps submitted to clearing, and requested that the Commission adopt an explicit prohibition.[10] One comment letter, from the Securities Industry and Financial Markets Association (''SIFMA'') on behalf of a majority of its swap dealer members who have expressed a view,[11] expressed support for the practice and concern about the effects of a prohibition.[12] The Commission has reviewed and considered these comment letters in issuing this proposed rulemaking.

A. Comments Concerning the Necessity of Post-Trade Name Give-Up for Cleared Swaps

Nearly all of the comment letters to the Name Give-Up Release asserted that post-trade name give-up is not justified for swaps submitted to a DCO for clearing.[13] Some commenters acknowledged that the practice may be necessary for uncleared swaps, which expose counterparties to bilateral credit risk,[14] but noted that the clearing process mitigates that risk.[15] Commenters further asserted that straight-through processing makes post-trade name give-up unnecessary.[16] According to commenters, straight-through processing promotes clearing efficiency, and therefore, obviates the need for counterparties to fulfill swap-related legal or operational tasks that would require disclosing their identities.[17] The Managed Funds Association (''MFA'') stated that it ''strongly believes that there is no legitimate commercial, operational, credit or legal justification for name give-up on SEFs for anonymously-executed cleared swaps.'' [18] SIFMA, to the contrary, asserted that ''even in connection with cleared swaps, there are frequently operational, credit/settlement, and legal considerations that necessitate [post-trade name give-up].'' [19]

B. Comments Concerning Effects on Competition and Liquidity

Commenters support prohibiting post-trade name give-up based on concerns that disclosing a counterparty's identity after a trade is executed can lead to

[3] Post-Trade Name Give-up on Swap Execution Facilities, 83 FR 61571 (Nov. 30, 2018) (''Name Give-Up Release'').

[4] For swaps executed anonymously on a SEF electronic order book, where participants may enter anonymous bids and offers, the disclosure of a counterparty's identity may occur through an electronic notification provided by the SEF after the trade is matched and executed. In certain voice-based SEF trading systems, a SEF employee who matches bids and offers may provide such notification to the counterparties.

[5] Post-trade name give-up may occur through third-party middleware and associated trade processing services that provide counterparties with various trade details captured from SEF trading systems, including the identity of the party on the other side of a trade. The Commission has provided that SEFs may use such third-party services to route trades to DCOs if the routing complies with § 37.702(b). *See* Core Principles and Other Requirements for SEFs, 78 FR 33476, 33535 (June 4, 2013) (''SEF Core Principles Final Rule''). Third-party trade processing services commonly used for SEF trades include those offered by IHS Markit. IHS Markit submitted a comment letter in response to the Name Give-Up Release. Although it did not express a particular view on the merits of post-trade name give-up practices, IHS Markit did confirm that its derivatives processing platform supports fully anonymous SEF trading that may be selected by a SEF for any SEF trade—a so called ''no-name give up workflow option.'' IHS Markit Letter at 1–2.

[6] For uncleared swaps, post-trade name give-up enables a market participant to perform a credit-check on a potential counterparty prior to finalizing the transaction. Due to the bilateral nature of an uncleared swap agreement, the practice also allows counterparties to manage credit exposure and payment obligations with respect to those transactions.

[7] Name Give-Up Release at 61571.

[8] *See* Name Give-Up Release at 61572.

[9] All comment letters submitted in response to the Name Give-Up Release are available through the Commission's website at *https://comments.cftc.gov/PublicComments/CommentList.aspx?id=2935*.

[10] The following commenters support a prohibition on post-trade name give-up: Americans for Financial Reform (''AFR''); Better Markets; David Blinkly; Federal Home Loans Banks (''FHLBanks''); FIA Principal Traders Group (''FIA PTG''); Investment Company Institute (''ICI''); Managed Funds Association (''MFA''); Robert Rutkowski; SIFMA Asset Management Group (''SIFMA AMG''); UBS Securities (''UBS''); and Vanguard.

[11] SIFMA, however, acknowledged in its comment letter that the views among its swap dealer members on post-trade name give-up are not uniform. SIFMA Letter at 1.

[12] The Commission notes that this letter is separate and distinct from the letter submitted by SIFMA AMG, and the views espoused by SIFMA in this letter contrast with the views represented by SIFMA AMG, which supported a prohibition on post-trade name give-up. SIFMA AMG members represent various U.S. and global asset management firms. SIFMA AMG Letter at 1, n.1.

[13] AFR Letter at 4; Better Markets Letter at 2; Blinkly Letter at 1; FHLBanks Letter at 2; FIA PTG Letter at 1; ICI Letter at 2–3; MFA Letter at 2; Rutkowski Letter at 4; SIFMA AMG Letter at 14; Vanguard Letter at 10. UBS stated that the practice should end absent a ''compelling'' justification. UBS Letter at 1.

[14] FHLBanks, for example, stated that the disclosure of counterparty identity for uncleared swaps is necessary to generate and update trading records, calculate counterparty credit risk exposures, issue margin calls, and conduct other related operational tasks. FHLBanks Letter at 2.

[15] FHLBanks Letter at 2; FIA PTG Letter at 1; ICI Letter at 2; MFA Letter at 2; ICI Letter at 3. *See also* FIA PTG Letter at 1 (stating that clearing leaves no credit, operational or legal exposures between the counterparties).

[16] FHLBanks Letter at 2; ICI Letter at 3; MFA Letter at 2–3; SIFMA AMG Letter at 14.

[17] FHLBanks Letter at 2 (stating that the clearing process occurs within ''moments'' after execution); MFA Letter at 2–3 (stating that straight-through processing ensures that the anonymously-executed swap is quickly submitted to, and accepted or rejected by, a DCO).

[18] MFA Letter at 2.

[19] SIFMA Letter at 6 (furthermore asserting that post-trade name give up ''helps enable parties to address operational errors and resulting risks'').

harmful ''information leakage.'' [20] MFA stated that prior to trading on a SEF with post-trade name give-up a participant must be comfortable with any participant on the venue potentially learning of its trading activity, because the participant has no control over who it will be matched with.[21] SIFMA Asset Management Group (''SIFMA AMG'') stated that information leakage resulting from post-trade name give-up occurs in an ''uncontrolled'' manner that allows others in the market to anticipate a participant's objectives.[22] The Federal Home Loan Banks (''FHLBanks''), the Investment Company Institute (''ICI''), and Vanguard similarly commented that such disclosure could expose a counterparty's trading positions, strategies, and/or objectives.[23] ICI further asserted that dealers would benefit by using this information to anticipate a buy-side client's trading intentions and potentially offer less favorable terms and pricing to that client in subsequent bilateral swap transactions.[24] FHLBanks stated that such disclosure is particularly problematic for end users who use swaps to hedge their business exposure.[25]

Commenters who oppose post-trade name give-up asserted that concerns about information leakage have broadly hindered participation and competition on SEFs.[26] MFA stated that post-trade name give-up has precluded buy-side participants who are concerned with the prospect of information leakage from accessing the ''unique'' liquidity pools and trading protocols available on SEFs that practice post-trade name give-up.[27] In contrast, according to MFA, dealers have access to all SEFs, which provides them with certain informational advantages over other market participants.[28] Several commenters, including MFA, believe that ''incumbent'' dealers that are traditional swap liquidity providers continue to insist that SEFs facilitate the practice of post-trade name give-up in order to discourage additional competition in the dealer-to-dealer SEF market.[29]

Many commenters stated that prohibiting post-trade name give-up would promote greater participation and competition in the swaps market, thereby potentially improving swap liquidity. FHLBanks, for example, believes that a prohibition would increase competition, reduce market fragmentation, and increase participation on central limit order books, which would lead to deeper liquidity pools and better pricing.[30] Better Markets and MFA similarly asserted that a prohibition would increase swap liquidity by diversifying the pool of SEF participants to include new liquidity providers.[31] ICI and SIFMA AMG also suggested that buy-side participants would be likely to participate on SEFs they had previously avoided if post-trade name give-up were prohibited.[32] Commenters further claim that increasing competition and participation on SEFs with a post-trade name give-up prohibition would establish a more efficient swaps trading market [33] with less information asymmetry among market participants.[34]

SIFMA's letter, on the other hand, argued that prohibiting post-trade name give-up is unnecessary and would harm liquidity in the swaps market. SIFMA stated that many market participants trade willingly on a SEF trading platform with post-trade name give-up.[35] SIFMA noted that buy-side participants who are concerned by post-trade name give-up already have the option of using ''fully anonymous'' central limit order book platforms that some SEFs currently offer.[36] SIFMA further noted, however, that trading on these platforms is currently minimal, which SIFMA argues reflects a lack of market demand for fully anonymous trading.[37] SIFMA argued, therefore, that prohibiting post-trade name give-up would be ''unfair'' to participants who choose not to trade fully-anonymously.[38] SIFMA also argued that a ''bifurcated market'' dynamic with post-trade name give-up is needed to promote liquidity in the swaps market.[39] In the dealer-to-dealer market, where dealers hedge their risks from dealer-to-client trading, SIFMA stated that pre-trade anonymity allows dealers to stream liquidity without attribution and observe available liquidity on the SEF, while post-trade name give-up helps them to price their liquidity based on client relationships, which involves assessing how that liquidity and underlying capital is allocated among clients over time and across different liquidity pools.[40] Counterparty disclosure, according to SIFMA, allows dealers to price that liquidity more accurately and offer better pricing.[41] SIFMA asserted that prohibiting post-trade name give-up would undermine these benefits, precluding dealers from providing such client-based pricing, and would limit their ability to choose how to manage risk.[42]

ICI, MFA, and SIFMA AMG disputed SIFMA's claim that capital and liquidity allocation requires the continued use of post-trade name give-up.[43] SIFMA AMG expressed skepticism about the ability of SEF systems or platforms with anonymous trading to provide that benefit, given that pre-trade anonymity does not allow dealers to choose their

[20] Better Markets Letter at 2; FHLBanks Letter at 2; ICI Letter at 3–4; MFA Letter at 4; SIFMA AMG Letter at 15; Vanguard Letter at 10.

[21] MFA Letter at 4 (describing post-trade name give-up as ''an unattractive proposition that undermines the anonymous nature of the trading protocol'').

[22] SIFMA AMG Letter at 15.

[23] FHLBanks Letter at 2; ICI Letter at 3; Vanguard Letter at 10 (stating that counterparty identity disclosure additionally exposes trading practices and other sensitive information).

[24] ICI Letter at 4. *See also* Better Markets Letter at 2 (noting that disclosure confers ''trading advantages'' upon dealers that collect and analyze this information).

[25] FHLBanks Letter at 3.

[26] MFA Letter at 2 (identifying post-trade name give-up as a ''significant impediment'' to investors' ability to trade on anonymous order books where post-trade name give-up is practiced); FHLBanks Letter at 2–3 (stating that post-trade name give-up has discouraged buy-side participants from trading on SEFs using the practice); ICI Letter at 4 (suggesting that buy-side participants avoid harms caused by information leakage by avoiding SEFs that require post-trade name give-up of intended-to-be-cleared swaps); UBS Letter at 1 (stating that post-trade name give-up dis-incentivizes certain market participants from trading on anonymous limit order book SEFs);

[27] MFA Letter at 4.

[28] *Id.*

[29] AFR Letter at 4 (asserting that post-trade name give-up allows dealers to retaliate against other competing liquidity providers or otherwise provides additional ways to discourage competition); Better Markets Letter at 2 (stating that a ''handful'' of dealers have prevented SEFs from eliminating the practice in order to limit access to liquidity from a small number of dealers); Blinkly Letter at 1 (stating that the practice helps to preserve ''dealer control'' of profits in the swaps markets); FIA PTG Letter at 1 (stating that the practice allows incumbent liquidity providers to monitor the presence of new liquidity providers seeking to enter the cleared swaps market); MFA Letter at 4 (referring to the practice as a ''policing mechanism'' to deter buy-side participation); Rutkowski Letter at 5 (same comment as AFR).

[30] FHLBanks Letter at 3.

[31] Better Markets at 2; MFA Letter at 6.

[32] *See* ICI Letter at 2, 4; SIFMA AMG Letter at 15.

[33] ICI Letter at 2; SIFMA AMG Letter at 15.

[34] MFA Letter at 6.

[35] SIFMA Letter at 5 (disputing the belief that participants who trade anonymously also want to remain anonymous post-execution).

[36] *Id.*

[37] *Id.* at 3 (asserting that the lack of liquidity on those SEF platforms demonstrates that ''a substantial cross-segment'' of participants prefer to trade with post-trade name give-up).

[38] *Id.*

[39] SIFMA Letter at 4–5 (explaining that dealers provide liquidity to clients and hedge residual risks in the dealer-to-dealer market).

[40] *Id.* at 4.

[41] *Id.* at 5 (stating that dealers are ''incentivized and able to provide their best pricing to clients with whom they have strong relationships'').

[42] *Id.* (noting that dealers are ''comfortable'' trading their client risks in existing liquidity pools).

[43] ICI Letter at 3 (describing the allocation explanation as ''not a compelling reason''); MFA Letter at 3; SIFMA AMG Letter at 14.

counterparty nor allocate their capital or liquidity to a specific counterparty.[44] MFA similarly commented that if a dealer wanted to allocate capital or liquidity to a specific counterparty, then it would use a disclosed SEF trading platform, not one that facilitates anonymous execution.[45] ICI argued that allowing certain participants to enter into swaps only with counterparties that are ''preferred customers'' does not promote liquidity, fairness, or competition.[46] MFA also disagreed with SIFMA's claim that market liquidity would be adversely impacted by a prohibition. MFA believes that if a dealer chooses to offer less liquidity, then the increased competition arising from a prohibition on post-trade give-up would offset that loss.[47] MFA further noted that a liquidity reduction has not transpired in other markets that feature fully anonymous trading.[48]

SIFMA also claimed that dealers may be unwilling or unable to participate in fully anonymous SEF trading environments without post-trade name give-up because such environments would allow SEF buy-side participants to ''game'' the market more successfully.[49] Several other commenters, however, stated that such behavior is not only unlikely,[50] but is also prohibited under the Commodity Exchange Act (''CEA'' or ''Act''), Commission regulations, and SEF rules;[51] and that post-trade name give-up is, in any case, not an appropriate mechanism to address such potential market abuse.[52]

III. Discussion

Based on its preliminary consideration of public comments and experience with implementing the SEF framework over the course of several years, the Commission proposes to prohibit post-trade name give-up practices for swaps that are anonymously executed on a SEF and are intended to be cleared. Proposed § 37.9(d)(1) would prohibit a SEF from directly or indirectly, including through a third-party service provider, disclosing the identity of a counterparty to a swap that is executed anonymously and intended to be cleared. The proposed rule, however, further specifies that the prohibition would not apply where such disclosure is otherwise required by the CEA or the Commission's regulations.[53] Proposed § 37.9(d)(2) would require a SEF to establish and enforce rules that prohibit any person, including through a third-party service provider, from effectuating such a disclosure. Finally, proposed § 37.9(d)(3) clarifies that the prohibition would not apply with respect to uncleared swaps, or with respect to any method of execution whereby the identity of a counterparty is disclosed prior to execution of the swap.

The Commission believes that this proposed rule would advance the statutory objectives of promoting swaps trading on SEFs and promoting fair competition among market participants. The Commission additionally believes that it would advance the congressional objectives underlying the existing prohibition against swap data repositories disclosing the identities of cleared swap counterparties. Finally, the Commission also preliminarily believes that post-trade name give-up may impede the policy objectives underlying the impartial access requirement applicable to SEFs.

The Commission emphasizes that the prohibition as proposed applies to a limited scope of trading platforms, *i.e.,* only those that facilitate anonymous trading of cleared swaps. The Commission views the practice of post-trade name give-up as an ancillary post-trade protocol—the prohibition of which limits neither the manner in which participants post bids and offers, nor how those bids and offers interact with one another. The prohibition is also not meant to mandate or favor ''all-to-all'' trading platforms. Rather, it is meant to encourage more diverse participation and greater competition on existing pre-trade anonymous SEF platforms for cleared swaps. Under the proposed rule, name-disclosed execution methods would still be permitted, and post-trade name give-up would continue to be permitted for uncleared swaps.

A. Promoting Swaps Trading on SEFs and Fair Competition Among Market Participants

CEA section 8a(5) authorizes the Commission to make and promulgate such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of this Act.[54] Further, CEA section 5h(e) establishes that the goal of the SEF regulatory regime is to promote swaps trading on SEFs and promote pre-trade price transparency in the swaps market.[55] CEA section 3(a) identifies swaps trading to be part of a ''national public interest'' that, among other things, provides a means for managing and assuming price risks, discovering prices, or disseminating pricing information through trading in liquid, fair and financially secure trading facilities.[56] CEA section 3(b) further specifies that the CEA's purpose is to ''foster'' that interest by promoting fair competition among market participants.[57] For the reasons discussed below, the Commission believes that prohibiting the practice of post-trade name give-up for swaps that are anonymously executed on a SEF and are intended to be cleared is reasonably necessary to advance the objectives of the aforementioned provisions of the Act.

The Commission believes that despite available liquidity for cleared products on certain SEF platforms, the range and number of active participants on such

[44] SIFMA AMG Letter at 14.

[45] MFA Letter at 3.

[46] ICI Letter at 3.

[47] *Id.*

[48] *Id.*

[49] SIFMA Letter at 3. As described in the Name Give-Up Release, dealers are reportedly concerned that buy-side clients who participate on dealer-to-dealer order books may undercut prices from dealers by posting aggressive bids or offers and then soliciting dealers through a request for quote on a dealer-to-client platform, hoping to motivate dealers to provide more favorable quotes based on those aggressive prices posted in the order book. Name Give-Up Release at 61572.

[50] FIA PTG, MFA, and SIFMA AMG asserted that no evidence exists that this behavior occurs in other markets with fully anonymous trading. FIA PTG Letter at 1; MFA Letter at 3; SIFMA AMG Letter at 14–15. FHLBanks and MFA noted that this behavior would carry reputational risk, and therefore, is unlikely to occur. FHLBanks Letter at 3, n.7; MFA Letter at 3. *See also* MFA Letter at 2 (stating that a SEF participant would otherwise defy self-interest by posting such aggressive bids or offers, given that other order book participants would quickly execute against those bids or offers).

[51] FHLBanks Letter at 3, n.7 (characterizing market ''gaming'' as ''intentional manipulation of the market''); MFA Letter at 3 (noting legal and regulatory risks of ''gaming'' the market); ICI Letter at 3 (noting that existing CFTC rules and SEF rules regarding market conduct and trading practices address ''gaming'' concerns).

[52] SIFMA AMG Letter at 15 (stating that the Commission's rules on disruptive trading practices and SEF market oversight more appropriately address such behavior than post-trade name give-up). The Commission notes that, notwithstanding the concerns articulated by SIFMA related to potential market ''gaming,'' to the extent that any such behavior violates the CEA or Commission regulations, it is subject to investigation and disciplinary action by SEFs and enforcement action by the Commission. SEFs are required to conduct ongoing monitoring and surveillance to monitor and detect fictitious posting of bids and offers on their trading platforms, as well as prosecute trading violations through established SEF disciplinary programs.

[53] This would include, for example, requirements relating to a SEF's obligation to disclose counterparty identities to a derivatives clearing organization or swap data repository.

[54] 7 U.S.C. 12(a)(5).

[55] 7 U.S.C. 7b–3(e).

[56] 7 U.S.C. 5(a) (stating that the transactions subject to the CEA are affected with a national public interest).

[57] 7 U.S.C. 5(b).

platforms may be limited due to market participants' concerns about information leakage and anticompetitive behavior made possible by post-trade name give-up.[58] The Commission believes that fully anonymous trading (*i.e.,* without post-trade name give-up) would likely encourage more participants to trade on those platforms.[59] Greater participation, in turn, would advance the goals of promoting trading and competition on SEFs. The Commission also believes that the proposed rule may advance the CEA's goal of fostering ''fair competition'' among market participants by reducing opportunities for information leakage. Furthermore, the Commission preliminarily believes that encouraging a greater number, and a more diverse set, of market participants to anonymously post bids and offers on these affected SEFs may promote greater interaction and competition between market participants, which should allow these platforms to act as more efficient mechanisms for price discovery.

B. SDR Information Privacy Requirements

CEA section 21(c)(6) requires a swap data repository (''SDR'') to maintain the privacy of any and all swap transaction information that it receives from a swap dealer, counterparty, or any other registered entity. The Commission implemented this requirement under § 49.17 of the Commission's regulations to address the scope of access that market participants may have to swap transaction data held by an SDR. For swaps executed anonymously on a SEF and cleared in accordance with the Commission's straight-through processing requirements, § 49.17(f)(2) explicitly limits this access by prohibiting a counterparty to a swap from accessing (i) the identity of the other counterparty or its clearing member; or (ii) the legal entity identifier of the other counterparty or its clearing member.[60] In implementing this rule, the Commission clarified that this swap transaction information is subject to the statutory privacy protections because, in the Commission's view, swap counterparties would not know one another's identity if the swap is submitted to clearing via straight-through processing.[61]

The Commission believes that post-trade name give-up undercuts the intent of this requirement and the congressional objectives underlying CEA section 21(c)(6).[62] Allowing a SEF to disclose a counterparty's identity is contrary to the purpose of prohibiting access to this information at an SDR under § 49.17(f)(2), given that a counterparty can obtain this knowledge from another source. Therefore, prohibiting post-trade name give-up would help to advance the objectives underlying the statutory privacy protections under CEA section 21(c)(6) and the Commission's regulations thereunder that apply to this information.

C. Impartial Access

CEA section 5h(f)(2)(B)—a provision within statutory SEF Core Principle 2—requires a SEF to establish and enforce trading, trade processing, and participation rules that, among other things, provide market participants with impartial access to the market.[63] The Commission implemented this statutory requirement by adopting § 37.202. Section 37.202(a) requires a SEF to provide any eligible contract participant (''ECP'')[64] with impartial access to its market(s) and market services, provided that the facility has, among other things, criteria governing such access that are impartial, transparent and applied in a fair and non-discriminatory manner.[65] In adopting § 37.202, the Commission explained that ''impartial'' means ''fair, unbiased, and unprejudiced.''[66] The Commission further stated the requirement would allow participants to ''compete on a level playing field'' and allow additional liquidity providers to participate on SEFs, thereby improving swaps pricing and market efficiency.[67]

Statutory SEF Core Principle 2 allows a SEF to adopt access limitations, but any such limitations must be consistent with the impartial access requirements.[68] For example, the Commission has stated that certain fee-based limitations would be permissible based on ''legitimate business justifications.''[69] While a SEF may impose different access criteria among different groups of ECPs, the Commission also stated that ''similarly situated'' ECPs must be treated in a similar manner.[70]

In practice, SEFs have adopted certain access limitations that affect a participant's ability to utilize a trading platform, such as prerequisites for trading on certain platforms or interacting with certain participants. Some of these prerequisites reflect the nature of the swap involved, such as whether the swap is cleared or uncleared.[71] A SEF may apply such access limitations on its participants based on legitimate business justifications.[72] In any case, a SEF's access limitations must be applied in a fair and non-discriminatory manner,

[58] *See supra* notes 26–29 and accompanying text. *See also infra* note 73.

[59] The majority of comment letters submitted in response to the Name Give-Up Release, as well as prior market participant commentary, indicate a strong interest among certain market participants who are not currently trading on these SEF platforms to do so if post-trade name give-up is prohibited. *See, e.g.,* Transcript of CFTC Market Risk Advisory Committee Meeting (Apr. 2, 2015) (''2015 MRAC Meeting Transcript'') at 133 *et seq., available at https://www.cftc.gov/About/CFTCCommittees/MarketRiskAdvisoryCommittee/mrac_meetings.html.*

[60] 17 CFR 49.17(f)(2).

[61] Swap Data Repositories—Access to SDR Data by Market Participants, 79 FR 16673–16674 (Mar. 26, 2014).

[62] The congressional objective to maintain the privacy of trading information, including trader identities, is also apparent elsewhere in the CEA. *See, e.g.,* CEA Section 8(a), 7 U.S.C. 12(a) (prohibiting the Commission from publication of data and information that would disclose the business transactions or market positions of any person and trade secrets or names of customers). *See also* § 1.59(b)(1)(ii) of the Commission's regulations prohibiting self-regulatory organization employees from disclosing material, non-public information obtained in the course of the employee's employment. In addition, § 1.59(d)(ii) separately prohibits an employee, governing board member, committee member or consultant from disclosing material, non-public information obtained through special access related to the performance of their duties. The Commission promulgated § 1.59 based on its stated belief that the concept underlying CEA section 8(a) should apply with equal force to employees and governing members of self-regulatory organizations. *See* Activities of Self-Regulatory Organization Employees and Governing Members Who Possess Material, Non-Public Information, 50 FR 24533, 24535 (June 11, 1985).

[63] 7 U.S.C. 7b–3(f)(2)(B).

[64] CEA section 2(e), 7 U.S.C. 2(e), limits swaps trading on SEFs to ''eligible contract participants,'' as defined under CEA section 1a(18), 7 U.S.C. 1a(18).

[65] 17 CFR 37.202(a). This requirement also applies to any independent software vendor.

[66] SEF Core Principles Final Rule at 33508.

[67] *Id.*

[68] *Id.* (a SEF may use its own reasonable discretion to determine its access criteria, provided that the criteria are impartial, transparent and applied in a fair and non-discriminatory manner, and are not anti-competitive).

[69] *Id.* at 33509 (stating that a SEF may offer different access fees under § 37.202(a)(3) pursuant to legitimate business justifications).

[70] *Id.*

[71] For example, a SEF may limit trading access for uncleared swaps to those market participants who have existing underlying documentation to execute such swaps with other potential counterparties. Such prerequisites have been found to be in violation of impartial access requirements when applied to trading cleared swaps, however. *See infra* note 75.

[72] For example, SEFs have been permitted to require participants to have certain trading enablements in place with a minimum percentage of other participants on the platform prior to trading uncleared swaps. This approach allows participants to appropriately manage bilateral counterparty risk of uncleared swaps, while also allowing the SEF to promote active and orderly trading by ensuring that a requisite number of participants can interact with one another.

and should not be intended to prevent or disincentivize participation on a SEF.

The practice of post-trade name give-up in isolation may not be discriminatory because participants would generally be eligible to onboard to the SEFs and trade on systems or platforms that equally subject all participants to post-trade identity disclosure. However, the practice may have resulted in a discriminatory effect against certain market participants.[73] The practice, in turn, may have deterred these participants from joining or trading in a meaningful way on SEFs that facilitate post-trade name give-up, thereby limiting competition on these SEFs. The Commission preliminarily believes that this undermines the policy goals of the impartial access requirement to ensure that market participants can compete on a level playing field and to allow additional liquidity providers to participate on SEFs.[74] Market participants who prefer post-trade name give-up may argue that a prohibition instead discriminates against them, but the Commission's preliminary assessment is that promoting a fully anonymous trading environment would better fulfill the goals of impartial access on SEFs.

The Commission believes that—with respect to operational, credit and settlement, and legal issues in particular—there is generally no imperative for post-trade name give-up if a swap is executed on a SEF and submitted to a DCO for clearing.[75] The Commission, however, recognizes that post-trade name give-up could be necessary for certain cleared swaps that are components of a package transaction that includes an uncleared component that creates bilateral credit, operational, or legal exposures that the counterparties must manage on an ongoing basis.[76] The Commission is therefore requesting additional public comment on the necessity and scope of an exception to the proposed rule for package transactions. With respect to SIFMA's assertion that certain other circumstances may still arise that would require counterparty disclosure,[77] the Commission generally agrees with other commenters that straight-through processing should obviate that need.[78] Nevertheless, the Commission is requesting additional public comment on whether any operational, credit and settlement, legal, or similar issues exist that would still require post-trade name give-up for an intended-to-be-cleared swap, outside of those swaps that are components of certain package transactions.

IV. Request for Comment

The Commission requests comment on all aspects of proposed § 37.9(d) including, but not limited to, responses to the comments provided in the Name Give-Up Release. In particular, the Commission requests comments on whether the proposed regulation would advance the statutory and regulatory goals and the requirements discussed in the previous section. In commenting on the potential effects of the proposed rule, the Commission requests background information, actual market examples, best practice principles, and expectations for possible impacts on competition, market structure, and liquidity. The Commission encourages commenters to provide supporting data, statistics, and any other relevant information.

In addition, the Commission requests comment on the following questions:

(1) Does post-trade name give-up undermine the Commission's stated goals of impartial access to (i) ensure market participants can compete on a level playing field, and (ii) allow additional liquidity providers to participate on SEFs? Please explain why or why not, and include any supporting data.

(2) Should the Commission narrow the scope of the proposed prohibition on post-trade name give-up to apply only to swaps that are required to be cleared under section 2(h)(1) of the Act, or alternatively, only to swaps that are subject to the trade execution requirement under section 2(h)(8) of the Act? Why or why not?

(3) How, if at all, would a prohibition on post-trade name give-up affect pre-trade price transparency on a SEF operating an anonymous central limit order book?

(4) How would the proposed prohibition on post-trade name give-up affect existing liquidity on SEFs? How would the proposed prohibition affect liquidity on central limit order books? Would the proposed prohibition indirectly affect liquidity on name-disclosed request for quote systems? If so, how? In particular, please provide substantiating data, statistics, and any other quantifiable information related to any such comments.

(5) Please explain the nature of any potential new liquidity on SEFs that may result from the proposed prohibition. For example, would liquidity increase due to a greater number of market participants trading and/or would liquidity increase due to additional market makers competing on affected SEFs?

(6) How, if at all, would the proposed prohibition on post-trade name give-up affect trading protocols such as auctions, portfolio compression, and/or workup sessions?

(7) Is trading on a SEF platform with post-trade name give-up for anonymously executed, intended-to-be-cleared swaps preferable to a fully-disclosed platform for a swap dealer's capital allocation purposes? If so, why?

(8) Please describe how post-trade name give-up currently helps swap dealers make markets in swaps, if at all.

(9) If the Commission were to prohibit post-trade name give-up as proposed in this notice, then how might that affect the prices that swap dealers quote to buy-side participants on SEFs operating name-disclosed, request for quote platforms?

(10) How does the price for a given swap listed on a SEF operating an anonymous central limit order book compare to the price for an equivalent swap listed on a SEF operating a name-disclosed request for quote system? How does the practice of post-trade name

[73] *See supra* notes 26–29 and accompanying text; 2015 MRAC Meeting Transcript at 133 *et seq.* The Commission notes that some market participants have asserted that post-trade name give-up has enabled anticompetitive behavior and unfair competition. *See supra* note 29 and accompanying text; MRAC Meeting Transcript at 133 at 169, 171.

[74] *See supra* note 67 and accompanying text.

[75] The Commission notes that mechanisms or agreements used to address bilateral counterparty risk have been viewed as inconsistent with impartial access when applied to cleared swaps because they limit a participant's ability to trade on SEFs without justification. For example, Commission staff previously viewed a SEF's application of such ''enablement mechanisms'' with respect to cleared swaps as ''prohibited discriminatory treatment'' that is inconsistent with the impartial access requirements under § 37.202. Division of Clearing and Risk, Division of Market Oversight and Division of Swap Dealer and Intermediary Oversight Guidance on Application of Certain Commission Regulations to Swap Execution Facilities at 1–2 (Nov. 14, 2013).

[76] *See* MFA Letter at 6; SIFMA Letter at 6.

[77] SIFMA Letter at 6.

[78] *See supra* notes 16–18 and accompanying text. The Commission has previously stated that the ''acceptance or rejection for clearing in close to real time is crucial for both effective risk management and for the efficient operation of trading venues.'' Customer Clearing Documentation, Timing of Acceptance for Clearing, and Clearing Member Risk Management, 77 FR 21278, 21285 (Apr. 9, 2012). Commission staff has also issued guidance that discusses appropriate practices to ensure prompt and efficient clearing. Staff Guidance on Swaps Straight-Through Processing (Sept. 26, 2013). In instances where a swap containing an error has been accepted for clearing, a SEF may facilitate the correction of the error without disclosing a counterparty's identity, such as by facilitating the execution and submission of an offsetting swap to clearing. *See* CFTC Letter No. 17–27, Re: No-Action Relief for Swap Execution Facilities and Designated Contract Markets in Connection with Swaps with Operational or Clerical Errors Executed on a Swap Execution Facility or Designated Contract Market (May 30, 2017) at 1, n.2.

give-up relate to any such difference in price?

(11) Are there certain cleared swap classes for which post-trade name give-up serves a particularly important role for swap dealers for market-making or hedging purposes that would be adversely affected by a prohibition?

(12) How many and what types of additional liquidity providers (*e.g.,* funds, proprietary trading firms, high-frequency traders) might join affected SEFs if post-trade name give-up were prohibited? Would these new participants be particularly interested in trading certain kinds of swap transactions (*e.g.,* spread trades)? Would these new participants be floor traders, swap dealers, or another type of entity?

(13) What other effects would a prohibition on post-trade name give-up have on the swap market?

(14) Should the Commission provide an exception to the prohibition on post-trade name give-up for swaps that are components of package transactions involving an uncleared swap? To what extent are such package transactions anonymously traded, given the involvement of an uncleared swap at the outset?

(15) If the Commission provides an exception with respect to package transactions, should it include an exception for package transactions involving any non-swap instrument, including Treasury securities? Should such an exception apply to the swap components if such non-swap instrument components are also executed anonymously and intended to be cleared?

(16) Excluding swaps that are components of certain package transactions, what, if any, operational, credit and settlement, legal, or similar issues exist that would still require post-trade name give-up for a swap that is intended to be cleared?

(17) Are there any alternatives to the proposed prohibition on name give-up that would better achieve the regulatory objectives stated above? For example, could these objectives be better accomplished through additional guidance or enforcement activity to address applications of post-trade name give-up that are inconsistent with the impartial access requirement?

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'')[79] requires federal agencies to consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, to provide an analysis regarding the economic impact on those entities. The regulation proposed herein will affect SEFs. The Commission has previously determined that SEFs are not ''small entities'' for the purpose of the RFA.[80] Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the regulation proposed herein will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act (''PRA'')[81] imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. The Commission may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (''OMB'') control number. The Commission has previously received a control number from OMB that includes the collection of information associated with Part 37 of the Commission's regulations. The title for this collection of information is ''Core Principles and Other Requirements for Swap Execution Facilities, OMB control number 3038–0074.''[82] Collection 3038–0074 is currently in force with its control number having been provided by OMB. However, the rule proposed herein does not impose any new recordkeeping or information collection requirements, and therefore contains no requirements subject to the PRA.

C. Cost-Benefit Considerations

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders.[83] Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the Section 15(a) factors.

The Commission is proposing to amend part 37 of the Commission's regulations to prohibit ''post-trade name give-up'' practices for swaps that are anonymously executed on a SEF and are intended to be cleared. Proposed § 37.9(d) of the Commission's regulations would prohibit a SEF from directly or indirectly, including through a third-party service provider, disclosing the identity of a counterparty to a swap that is executed anonymously and intended to be cleared. The proposed regulation would also require SEFs to establish and enforce rules that prohibit any person from effectuating such a disclosure.

The baseline for this consideration of costs and benefits with respect to the proposal herein is the status quo, which includes the existing practice of post-trade name give-up for cleared swaps on some SEFs, and the current regulatory requirements that do not explicitly prohibit post-trade name give-up for cleared swaps that are executed anonymously. The Commission emphasizes that the proposed prohibition will not apply to uncleared swaps or SEF trading systems and platforms that are not pre-trade anonymous. Proposed § 37.202(d)(3) clarifies that the prohibition would not apply with respect to uncleared swaps, or with respect to any method of execution whereby the identity of a counterparty is disclosed prior to execution of the swap. Some swaps trading on SEFs today occurs on ''disclosed'' trading systems and platforms that provide the identities of potential counterparties to one another before execution occurs. Such is the case, for example, with certain request for quote systems offered by SEFs.

The Commission notes that this consideration of costs and benefits is based on the understanding that the swaps market functions internationally, with many transactions involving U.S. firms taking place across international boundaries, with some Commission registrants being organized outside of the United States, with leading industry members typically conducting operations both within and outside the United States, and with industry members commonly following substantially similar business practices wherever located. Where the Commission does not specifically refer to matters of location, the below discussion of costs and benefits refers to the effects of the proposed rules on all swaps activity subject to the proposed and amended regulations, whether by

[79] 5 U.S.C. 601 *et seq.*

[80] *See* SEF Core Principles Final Rule at 33548.

[81] 44 U.S.C. 3501 *et seq.*

[82] *See* OMB Control No. 3038–0074, *https://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=3038-0074.*

[83] 7 U.S.C. 19(a).

virtue of the activity's physical location in the United States or by virtue of the activity's connection with or effect on U.S. commerce under CEA section 2(i).[84]

The Commission has endeavored to assess the expected costs and benefits of the proposed rulemaking in quantitative terms, where possible. In situations where the Commission is unable to quantify the costs and benefits, the Commission identifies and considers the costs and benefits of the proposed rule in qualitative terms. The lack of data and information to estimate those costs and benefits is attributable in part to the nature of the proposed rule and uncertainty about the potential responses of market participants to the implementation of the proposed rule. The Commission recognizes that potential indirect costs and benefits of the proposed prohibition on post-trade name give-up, *i.e.,* those relating to effects on trading behavior, liquidity, and competition, may be impossible to accurately predict or quantify prior to implementation of the proposed rule.

1. Costs

The Commission's preliminary assessment is that the direct costs for SEFs of implementing and complying with proposed § 37.9(d) would not be material. Proposed § 37.9(d)(1) would prohibit SEFs from directly or indirectly, including through a third-party service provider, disclosing the identity of a counterparty to a swap that is executed anonymously and intended to be cleared. Only SEFs that currently practice post-trade name give-up for cleared swaps would be required to take action to comply with proposed § 37.9(d)(1), and the Commission's preliminary understanding is that the costs of adjusting affected SEF protocols in order to comply would be negligible.[85] However, the Commission requests that SEFs that presently employ post-trade name give-up for cleared swaps comment on this proposal and provide estimates of any direct costs they would incur in complying with proposed § 37.9(d)(1). Proposed § 37.9(d)(2) would require SEFs to establish and enforce rules to prohibit any person from directly or indirectly, including through a third-party service provider, disclosing the identity of a counterparty to a swap that is executed anonymously and intended to be cleared. Complying with § 37.9(d)(2) would require a SEF to file such rules with the Commission in accordance with part 40 of the Commission's regulations. The Commission estimates that filing such rules may take up to 50 hours which is unlikely to be a major cost burden on SEFs. The Commission anticipates that the direct cost of complying with proposed § 37.9(d) for market participants and third-party service providers should be at or near zero.

With respect to potential indirect costs of the proposed rule, SIFMA has suggested that a prohibition on post-trade name give-up may impair the ability of incumbent liquidity providers to manage risk and provide liquidity which in turn would be ''likely to worsen pricing that dealers can offer to clients.'' [86] Although the Commission is aware of the concerns raised by SIFMA, it is not, at this time, convinced that prohibiting post-trade name give up would increase the costs of trading swaps for end users and other swap dealer clients. The Commission preliminarily believes that negative pricing effects on SEFs would be unlikely to result, as competition from new market participants and incumbent liquidity providers that continue to provide liquidity should offset this possibility. However, the Commission requests additional comments relating to the risks and costs of such an outcome. The Commission also requests public comment regarding any additional indirect costs of the proposed rule.

2. Benefits

The Commission believes that implementing the proposed rule may improve liquidity on SEFs, particularly on affected SEF order books. The practice of post-trade name give-up has reportedly deterred a significant segment of market participants from making markets on or otherwise participating on affected SEFs. The Commission expects that some of these market participants would choose to participate on these SEFs if the Commission were to prohibit the practice, leading to increased liquidity. Increased liquidity could benefit market participants by making it easier to execute transactions, especially larger transactions, quickly and without undue price impact. As discussed below, Commission staff has reviewed several empirical event studies, which focus specifically on the effect of post-trade anonymity on market liquidity. Most of these studies, such as those discussed below, document an improvement in liquidity. The Commission notes that the markets that are the subjects of these studies are not the same as U.S. swaps markets and are mostly not dealer-oriented markets. Some of the markets studied are also deeper and more liquid than the U.S. swaps market. The Commission requests public comment on the validity or applicability of the papers discussed below, as well as any other studies that may be instructive.

One of the early empirical studies focused on the implementation of post-trade anonymity on the London Stock Exchange after the introduction of a central counterparty to electronic equity trading in February 2001.[87] Prior to this change, the market was pre-trade anonymous, but the two parties involved in a trade were informed about each other's identities once the transaction was completed. The authors found that post-trade anonymity resulted in higher market depth and lower spreads and execution costs. Liquidity improvements were more pronounced for small stocks and stocks with higher trading concentration, which are expected to exhibit large exogenous information asymmetries. Such stocks may be more analogous to swap markets than larger stocks with less trading concentration. Post-trade anonymity seemed to benefit mostly those who traded repeatedly and traded the largest volumes. The authors argue that ''bilateral disclosure of trader identities harms traders who are known to account for a sizable portion of total volume and who trade repeatedly in the same direction because it facilitates anticipation of their orders.'' [88]

Another study explored a post-trade anonymity reform introduced by the Oslo Stock Exchange between 2008 and 2010. During this period, the 25 most traded stocks on the Oslo Stock Exchange were periodically selected to trade fully anonymously, while the broker identities of traders involved in

[84] Section 2(i)(1) applies the swaps provisions of both the Dodd-Frank Act and Commission regulations promulgated under those provisions to activities outside the United States that have a direct and significant connection with activities in, or effect on, commerce of the United States. 7 U.S.C. 2(i). Section 2(i)(2) makes them applicable to activities outside the United States that contravene Commission rules promulgated to prevent evasion of Dodd-Frank.

[85] *See, e.g.,* Peter Madigan, ''CFTC to Test Role of Anonymity in SEF Order Book Flop,'' Risk.net (Nov. 21, 2014) (according to one SEF official, ''the revealing of the name is a legacy behavior and it's not necessary that we reveal it. Should we be told not to by the regulators, we will flick a switch and the world will go on. It will not be a profound change and it's not going to require re-engineering the system''), *available at http://www.risk.net/risk-magazine/feature/2382497/cftc-to-test-role-of-anonymity-in-sef-order-book-flop. See also supra* note 5 (SEFs that use IHS Markit services to route trades can select an already available ''no-name give up workflow option'').

[86] SIFMA Letter at 4.

[87] Freiderich, S. and R. Payne (2014), ''Trading anonymity and order anticipation,'' *Journal of Financial Markets,* 21, 1–24.

[88] *Id.*

transactions on all other stocks were released to all market participants after each transaction. This study found that post-trade anonymity led to lower bid-ask spreads and higher volume. These results seemed to be driven by increased trading from institutional investors, who split their orders into multiple smaller transactions potentially to reduce information leakage and price impact. The author found that ''anonymity increases liquidity in part by reducing the liquidity providers' adverse selection costs. However, the increase in stock liquidity is also partly driven by a reduction in liquidity provider revenues.'' [89]

Another study examined the 2008 transition of equity trading in Helsinki, Reykjavik, and the five most traded stocks in Stockholm where broker codes were removed from all real-time market data feeds. It also examined the 2009 reversal of this change. The findings suggested that liquidity, measured by quoted spreads, price impact, and limit order book depth, ''improves when anonymous post-trade reporting is introduced, and liquidity worsens when anonymous post-trade reporting is reversed.'' [90] However, results were weaker during the reversal, which the authors attribute to other contemporaneous factors.

A study exploring the effects of post-trade anonymity on the German electronic trading platform Xetra showed that concealing broker identities from their counterparties resulted in lower execution costs.[91]

An empirical study focusing on the information content of broker identities provided a potential explanation for the improvement in liquidity documented in many of the aforementioned event studies. It showed that the disclosure of broker identities allowed information leakage, even though participants sometimes used multiple brokers and mixed signal strategies to potentially hide their trading intentions.[92] The authors of this study suggested that the documented improvement in liquidity, associated with greater anonymity, may have come at the expense of information efficiency, as prices potentially adjusted to order flow information more slowly under increased anonymity. Because this study relied on Finnish data during the period of 2000 to 2001, the authors also conjectured that algorithmic trading could potentially allow informed investors to hide their orders better, but it could also enable proprietary traders to uncover informed order flow.

Some studies did not find that implementing post-trade anonymity improved liquidity. One such study, investigating the impact of post-trade anonymity from the perspective of liquidity providers in a dealer market, showed that the 2003 introduction of post-trade anonymity on the Nasdaq platform did not improve best quotes. The author concluded that ''introducing anonymity on [the] Nasdaq platform did not lead to an increase in competition between market makers.'' [93]

Moreover, a study on the South Korea Exchange argued that revealing the ex-post order flow of major brokers to the entire market led to an improvement in liquidity. It investigated the effects of public disclosure of the identities of the top five brokers and their trades. Notably, this disclosure occurred just twice per day. Trading volume was higher in the setting without post-trade anonymity. Moreover, while realized spreads were lower when broker identities were disclosed, price impact costs were higher. The authors argued that ''these findings strongly indicate that providing broker IDs induces more competition among liquidity providers that lowers the realized spread and, as indicated by higher market impact costs, provides more rapid dissemination of information, which in turn provides market efficiency.'' [94]

Commission staff also reviewed several theoretical studies, which presented models with various levels of post-trade transparency in different settings and could offer some insight on post-trade anonymity, although they did not directly compare it to the case of bilateral disclosure of counterparty identities right after each trade. The predictions of these models were mixed. One theoretical study, focused on the post-trade public disclosure of insiders in equity markets, argues that public disclosure of insider trades accelerates the price discovery process and reduces trading costs.[95] These predictions suggested that post-trade anonymity could strengthen asymmetric information in the market, subsequently reducing liquidity by exacerbating the market maker's adverse selection problem. However, another study argued that the effect of anonymity on liquidity could also be positive, if the information acquisition is endogenous, because then anonymity could potentially bolster market participants' incentives to acquire information.[96]

Another study on the disclosure of insider trades developed a model where the insider is risk averse and showed that the insider is encouraged to trade less aggressively on his private information, weakening both informational efficiency and market liquidity.[97] This finding suggests that post-trade anonymity could encourage informed traders to trade more aggressively on their private information, facilitating price discovery and improving market liquidity. Another study suggested that the presence of order anticipation strategies, often referred to as ''back running,'' alters the trading strategies of institutional and retail investors, in an effort to avoid being detected.[98] The authors predicted that fundamental investors introduce random noise in their strategies to avoid being detected. However, surprisingly, when the accuracy of the back runners' signals is high their profits may be reduced, especially if there are many of them.

The practice of post-trade name give-up was explicitly addressed in a theoretical study that was cited in a comment letter to the Name Give-Up Release from Americans for Financial Reform (''AFR'').[99] This study modeled the investor choice between over-the-counter (''OTC'') markets and electronic order books, and assessed the value of OTC markets for market quality and total welfare.[100] The authors showed

[89] Meling, T.G., ''Anonymous Trading in Equities'' (2018 working paper), *available at https://ssrn.com/abstract=2656161*.

[90] Dennis, P.J., and Sandas, P., ''Does Trading Anonymously Enhance Liquidity?'' (2019 working paper), *available at https://ssrn.com/abstract=2516933*. The original change in post-trade transparency was reversed for all stocks, except the five most traded stocks in Helsinki.

[91] Hachmeister, A. and Schiereck, D., ''Dancing in the dark: Post-trade anonymity, liquidity and informed trading'' (2010), *Review of Quantitative Finance and Accounting,* 34, 145–177.

[92] Linnainmaa, J., Saar, G., ''Lack of anonymity and the inference from order flow'' (2012), *Review of Financial Studies,* 25, 1414–1456.

[93] Benhami, K., ''Liquidity providers' valuation of anonymity: The Nasdaq Market Makers evidence'' (2006 working paper), *available at https://www.cass.city.ac.uk/__data/assets/pdf_file/0005/78737/2Benhami.pdf*.

[94] Pham, T.P., et al., ''Intra-day Revelation of Counterparty Identity in the World's Best-Lit Market,'' (2016 working paper), *available at https://ssrn.com/abstract=2644149*.

[95] Huddhart, S., J., Hughes and Levine, ''Public Disclosure and Dissimulation of Insider Trades'' (2001), *Econometrica,* 69, 665–681.

[96] Rindi, B., ''Informed Traders as Liquidity Providers: Anonymity Liquidity and Price Formation,'' (2008), *Review of Finance,* 12, 497–532.

[97] Buffa, A.M., ''Insider Trade Disclosure, Market Efficiency, and Liquidity'' (2014 working paper), *available at https://ssrn.com/abstract=1102126*.

[98] Yang, L. and Zhu, H., ''Back-Running: Seeking and Hiding Fundamental Information in Order Flows'' (2019), *The Review of Financial studies,* forthcoming, *available at https://ssrn.com/abstract=2583915*.

[99] AFR Letter at 4–5.

[100] Lee, T. and Wang, C., ''Why Trade Over-the-Counter? When Investors Want Price Discrimination'' (2019 working paper), *available at https://ssrn.com/abstract=3087647*.

that, although the presence of OTC markets increases total volume and decreases the average spread, it can still harm total welfare [101] if the adverse selection costs are low, *i.e.,* in markets with limited informed speculators and high trading activity in OTC markets. This is because ''uninformed'' investors (*i.e.,* profit-indifferent, hedging traders) are more likely to be offered lower spreads in OTC markets, while spreads widen for ''informed'' investors (speculators). The practice of post-trade name give-up allows dealers, who offer liquidity both through requests for quotes and in the electronic order book, to detect the trading motives of their counterparties and lower their adverse selection costs. ''Given low OTC market share in swaps, eliminating [post-trade name give-up] is predicted to increase welfare, decrease total volume and widen average spread. Specifically, spreads on swaps exchanges are predicted to decline while the OTC spreads are expected to increase.'' [102]

The Commission finds these studies potentially instructive, along with assertions provided by the majority of commenters, to indicate that overall liquidity may be improved by proposed § 37.9(d). Moreover the Commission is concerned with assertions that the status quo facilitates information asymmetries and hinders access and participation on affected SEF trading systems for many market participants. The Commission believes that the proposed rule may benefit market participants by reducing these information asymmetries and could increase participation on these SEF platforms. The Commission requests additional public comment regarding potential benefits of the proposed rule.

3. Section 15(a) Factors

a. Protection of Market Participants and the Public

The proposed rule is intended to protect market participants and the public by advancing the statutory goals of promoting swaps trading on SEFs and fostering fair competition among market participants. Further, the Commission believes the practice of post-trade name give-up may be inconsistent with the policy goals of the SEF impartial access requirements which are intended to allow participants to compete on a level playing field and allow additional liquidity providers to participate on SEFs.

b. Efficiency, Competitiveness, and Financial Integrity of the Markets

The proposed rule is intended to enhance competitiveness in the swap markets by removing an effective barrier to participation on SEFs for many market participants who are concerned with the prospect of information leakage. The Commission expects participation on SEFs to increase as a result, leading to greater competition.

c. Price Discovery

The Commission believes that the proposed rule may encourage a greater number of market participants to anonymously post bids and offers on affected SEFs, which may promote greater interaction and competition between market participants, thereby allowing these platforms to act as more efficient mechanisms for price discovery.

d. Sound Risk Management Practices

Similarly, increased participation and competition on SEFs and decreased information asymmetry among market participants is likely to enhance SEF trading as a mechanism for risk management.

e. Other Public Interest Considerations

Post-trade name give-up is inconsistent with Commission regulations intended to protect the privacy of a swap counterparty's trading information. Prohibiting post-trade name give-up would help to effectuate the statutory privacy protections under CEA section 21(c)(6) that apply to this information.

4. Request for Comment

The Commission invites public comment on all aspects of the cost-benefit considerations herein, including the discussion of the section 15(a) factors. Commenters are requested to provide data and any other information or statistics to support their position. To the extent commenters believe that the costs or benefits of any aspect of the proposed rule are reasonably quantifiable, the Commission requests that they provide data, statistics and any other information that will assist the Commission in quantification. Finally, the Commission requests comment on the academic literature related to post-trade anonymity, including comments on the validity or applicability of the papers the Commission has discussed herein and any other studies the Commission should review.

D. Antitrust Considerations

Section 15(b) of the CEA requires the Commission to take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the purposes of this Act, in issuing any order or adopting any Commission rule or regulation (including any exemption under section 4(c) or 4c(b)), or in requiring or approving any bylaw, rule, or regulation of a contract market or registered futures association established pursuant to section 17 of this Act.[103]

The Commission believes that the public interest to be protected by the antitrust laws is generally to protect competition. The Commission requests comment on whether the proposed rule implicates any other specific public interest to be protected by the antitrust laws.

The Commission has considered the proposed rule to determine whether it is anticompetitive and has preliminarily identified no anticompetitive effects. In particular, the Commission preliminarily believes that the proposed amendments to part 37 will promote competition on SEFs. The Commission requests comment on whether the proposed rule is anticompetitive and, if it is, what the anticompetitive effects are.

Because the Commission has preliminarily determined that the proposed rule is not anticompetitive and has no anticompetitive effects, the Commission has not identified any less anticompetitive means of achieving the purposes of the Act. The Commission requests comment on whether there are less anticompetitive means of achieving the relevant purposes of the Act that would otherwise be served by adopting the proposed rule.

List of Subjects in 17 CFR Part 37

Swaps, Swap execution facilities.

For the reasons stated in the preamble, the Commodity Futures Trading Commission proposes to amend 17 CFR part 37 to read as follows:

PART 37—SWAP EXECUTION FACILITIES

■ 1. The authority citation for part 37 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6c, 7, 7a–2, 7b–3, and 12a, as amended by Titles VII and VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376.

■ 2. In § 37.9, add paragraph (d) to read as follows:

[101] Welfare is the expected sum of all market participants' payoffs.

[102] *Id.* at 26–27.

[103] 7 U.S.C. 19(b).

§ 37.9 Methods of execution for required and permitted transactions.

* * * * *

(d) *Counterparty anonymity.* (1) Except as otherwise required under the Act or the Commission's regulations, a swap execution facility shall not directly or indirectly, including through a third-party service provider, disclose the identity of a counterparty to a swap that is executed anonymously and intended to be cleared.

(2) A swap execution facility shall establish and enforce rules that prohibit any person from directly or indirectly, including through a third-party service provider, disclosing the identity of a counterparty to a swap that is executed anonymously and intended to be cleared.

(3) The provisions in paragraphs (d)(1) and (d)(2) of this section shall not apply with respect to uncleared swaps, or with respect to any method of execution whereby the identity of a counterparty is disclosed prior to execution of the swap.

Issued in Washington, DC, on December 20, 2019, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Post-Trade Name Give-Up on Swap Execution—Commission Voting Summary and Commissioners' Statements

Appendix 1—Commission Voting Summary

On this matter, Chairman Tarbert and Commissioners Quintenz, Behnam, Stump, and Berkovitz voted in the affirmative. No Commissioner voted in the negative.

Appendix 2—Joint Statement of Chairman Heath Tarbert, Commissioner Rostin Behnam, and Commissioner Dan M. Berkovitz

It is a hallmark of American exchange-style trading systems that the buyer and seller of a given financial instrument have no reason to know—and do not know—the identity of one another.[1] Trading anonymity can be viewed as a great equalizer, leveling the playing field for counterparties of all sizes and types by allowing traders to enter and exit the market without exposing their trading positions and strategies.[2] As a result, markets with pre- and post-trade anonymity are generally not only fairer, but also feature greater liquidity and greater competition between market participants.[3]

Before the adoption of central clearing for standardized swaps, post-trade disclosure of counterparty identities was the norm in swaps markets because of the need to manage counterparty credit risk. For example, Party A would ask its broker to enter into a five-year interest rate swap to exchange a fixed payment for a floating rate. The broker would find (often through another broker) Party B, who would be willing to take the other side of the swap. Post-trade, the identities of Party A and B would be revealed to one another. A five-year bilateral relationship would thus ensue, wherein both parties would need to monitor their counterparty's respective ability to make good on their obligations. But times have now changed.

The Dodd-Frank Act has encouraged—and in some instances required—centralized clearing for classes of swaps that are sufficiently standardized and liquid to be cleared through a central counterparty, *i.e.,* a derivatives clearinghouse.[4] As is the case for exchange-listed products, a cleared swap no longer exposes the respective parties to the risk of non-performance. Rather than Party A and Party B being obligated to one another under the terms of the swap, the clearinghouse steps in between the parties to the trade and takes on the counterparty credit risk of both sides.[5] Consequently, anonymous trading is now possible for large swaths of the U.S. swaps markets.

Yet a number of swap execution facilities (''SEFs'') still retain a vestige of the old bilateral over-the-counter markets, even for transactions that are centrally cleared: The practice of ''post-trade name give-up.'' That is, the SEF will provide the identity of each swap counterparty to the other after a trade has been executed anonymously. Given the advent of clearing, many have reasonably questioned the policy rationale for post-trade name give-up for cleared swaps, and still others have gone further, criticizing the practice as anticompetitive and an obstacle to broad and diverse participation on SEFs.

We support today's proposed rule (''Proposal'') to prohibit post-trade name give-up for swaps that are executed anonymously via a SEF and intended to be cleared.[6] We believe that the Proposal serves two key objectives of the Commission's governing statute: (1) Promoting swaps trading on SEFs[7] and (2) promoting fair competition among market participants, including through impartial access to a SEF's trading platform.[8] The Proposal could also help attract a diverse set of additional market participants who have been deterred from trading on these platforms by the practice of post-trade name give-up, but remain interested in bringing liquidity and competition to SEFs if there is a level playing field.

The Proposal is in large part based upon responses to the Commission's November 2018 request for comment on post-trade name give-up.[9] A large majority of commenters saw no sufficient justification for the practice with respect to cleared swaps, given the absence of counterparty credit risk attending such swaps.[10] These

[1] *See, e.g.,* Peter A. McKay, *CME and CBOT to Close Loophole,* Wall St. J. (Apr. 15, 2006) (''When stocks are traded on public exchanges, investors generally don't know who they are buying from or selling to. On futures exchanges, most investors expect the same thing when trading electronically.'').

[2] *See, e.g.,* Peter Madigan, *CFTC to Test Role of Anonymity in SEF Order Book Flop,* Risk (Nov. 21, 2014) (noting arguments that anonymity creates a more egalitarian market); Managed Funds Association (''MFA''), *Position Paper: Why Eliminating Post-Trade Name Disclosure Will Improve the Swaps Market* 8 (Mar. 31, 2015) (arguing that ''markets should remain anonymous to create a level playing field for all participants''); CFTC Market Risk Advisory Committee, *Panel Discussion: Market's Response to the Introduction of SEFs* 139 (Apr. 2, 2015) (''MRAC Meeting Transcript'') (noting buy-side reticence to use SEF order books with name give-up because of potential uncontrolled information leakage); *see also* Testimony of Stephen Berger, Citadel LLC, Before the Subcomm. on Commodity Exchanges, Energy, & Credit of the H. Comm. on Ag., *Hearing to Review the Impact of G–20 Clearing and Trade Execution Requirements* (June 14, 2016) (testifying on behalf of MFA) (asserting that lack of post-trade anonymity ''creates an uneven playing field and impairs competition'').

[3] *See, e.g.,* MRAC Meeting Transcript, *supra* note 2, at 154 (explaining that anonymous order books have facilitated liquidity and diverse participation in markets for other instruments, such as equities and futures); S. Freiderich & R. Payne, *Trading Anonymity and Order Anticipation,* 21 Journal of Financial Markets 1–24 (2014) (finding that post-trade anonymity improved market liquidity, particularly for small stocks and stocks with concentrated trading, which may be more analogous to swaps); T.G. Meling, *Anonymous Trading in Equities* (2018 working paper) (also finding that post-trade anonymity improved market liquidity); P. J Dennis & P. Sandas, *Does Trading Anonymously Enhance Liquidity?* (2019 working paper) (same); A. Hachmeister & D. Schiereck, *Dancing in the Dark: Post-Trade Anonymity, Liquidity, and Informed Trading,* 34 Review of Quantitative Finance and Accounting 145–177 (2010) (same); J. Linnainmaa & G. Saar, *Lack of Anonymity and the Inference from Order Flow,* 25 Review of Financial Studies 1,414–1,456 (2012) (same).

[4] Commodity Exchange Act (''CEA'') section 2(h)(8), 7 U.S.C. 2(h)(8); *see also* Committee on Capital Markets Regulation, *The Global Financial Crisis: A Plan for Regulatory Reform* iii (May 2009), *https://www.capmktsreg.org/wp-content/uploads/2018/10/The-Global-FInancial-Crisis-A-Plan-for-Regulatory-Reform.pdf* (''If clearinghouses were to clear CDS contracts and other standardized derivatives, like foreign exchange and interest rate swaps, systemic risk could be substantially reduced by more netting, centralized information on the exposures of counterparties, and the collectivization of losses.'').

[5] *See* Robert S. Steigerwald, Federal Reserve Bank of Chicago, *Central Counterparty Clearing,* in Understanding Derivatives: Markets and Infrastructure (2013) (explaining that through novation, the original contract is replaced by two contracts, with the central counterparty becoming buyer to the seller and seller to the buyer).

[6] Of note, the proposed prohibition would not apply to trading protocols that involve *pre-trade* counterparty disclosure, such as a typical request-for-quote process.

[7] CEA section 5h(e), 7 U.S.C. 7b–3(e).

[8] CEA section 3(b), 7 U.S.C. 5(b) (listing fair competition among market participants as a goal of the CEA); CEA section 5h(f)(2)(B)(i) (requiring a SEF to establish and enforce rules to provide participants impartial access to the market).

[9] CFTC Request for Comment on Post-Trade Name Give-Up on Swap Execution Facilities, 83 FR 61,571, 61,572 (Nov. 30, 2018).

[10] *See, e.g.,* Investment Company Institute (''ICI'') Letter at 3; FHLBanks Letter at 2; Futures Industry Association Principal Traders Group (''FIA PTG'') Letter at 1; MFA Letter at 2; SIFMA AMG Letter at 14; Vanguard Letter at 2; Better Markets Letter at 2, 66. This seems particularly to be the case in light of pre-trade credit check and straight-through

commenters acknowledged arguments that dealers use the practice to allocate capital to preferred customers as part of an overall cross-marketing strategy. However, they either did not find this rationale legitimate or believed that it does not justify potential harms resulting from name give-up.[11]

Commenters identified several such harms. A principal concern was the risk of information leakage allowing counterparties to glean a SEF participant's trading positions and strategies.[12] Commenters also expressed concern that disclosure of counterparty identities could run counter to the ''impartial access'' requirement for SEFs. Under this view, SEF participants can (and purportedly do) use name give-up to discriminate against counterparties whose trading practices they believe are harmful.[13] A large majority of commenters stated that the concerns discussed above have inhibited buy-side participation on SEFs employing name give-up.[14] In their view, prohibiting the practice would enhance liquidity on SEFs. Empirical studies on the effects of post-trade anonymity—in U.S. securities markets and in a wide range of foreign financial markets—bolster this view.[15]

We note that one response to the request for comment argued that post-trade anonymity could prompt dealers to withdraw from SEFs. The comment expressed concerns that the prohibition could on net reduce liquidity on SEFs.[16] Yet we have seen predictions of a drought in liquidity time and time again with respect to swaps regulatory reform. For example, it was used to oppose the clearing requirement of the Dodd-Frank Act and the Commission's 2013 SEF trading rules.[17] Such predictions have not proven accurate thus far.[18]

Thus, to be persuaded that the Proposal would have net liquidity-reducing effects, we will need convincing evidence. While we remain open to all commenters' viewpoints, we currently believe that SEF trading that starts anonymous should remain anonymous. This belief is consistent with the Commission's past views regarding a swap that is executed anonymously on a SEF.[19] Demonstrating otherwise will require more than hypothetical scenarios or anecdotal statements.

We look forward to reviewing comments on the Proposal and working with all external stakeholders to address this issue in a way that enhances SEF liquidity, ensures impartial access, and promotes increased and fair competition.[20]

Appendix 3—Supporting Statement of Commissioner Brian Quintenz

I will vote in favor of today's proposal to prohibit post-trade name give-up practices for swaps that are anonymously executed on a swap execution facility (''SEF'') and cleared (''Proposal'') in order for the Commission to receive further comment on the Proposal's potential market structure impact.

In November 2018, the Commission issued a request for public comment regarding the practice of post-trade name give-up.[1] The overwhelming majority of comment letters to that release opposed post-trade name give-up and requested that the Commission explicitly prohibit the practice. The Proposal before us today was heavily informed by those commenters' perspectives.

The Proposal rightly notes that for anonymously executed and cleared trades, the need for market participants to know the identity of their counterparties for credit risk, legal, or operational purposes was obviated by the central clearing of swaps. However, I have concerns about the government banning an established trading practice that supports liquidity in the dealer-to-dealer swaps market. Post-trade name give-up serves an important market function in enhancing swap dealers' own risk management needs resulting from their client exposures. The Commission should understand how banning post-trade name give-up could impact dealers' ability to hedge efficiently.

The Proposal assumes, without the benefit of a fulsome analysis of CFTC swap data, that banning post-trade name give-up would promote greater participation, liquidity, and fair competition on SEFs. Hoping to confirm if these assumptions are correct, the Proposal asks a series of basic questions about the differences between SEFs that are predominantly dealer-to-client platforms versus inter-dealer SEFs, including differences regarding liquidity providers, types of products actively traded, and pricing. Mandating changes to market structure in the hopes of increasing competition and liquidity, but without a full understanding of how these changes may implicate fundamental market dynamics, is a path that gives me great pause.

I encourage all interested parties to provide written comments and data wherever possible in order to further the Commission's understanding of how banning this trading practice may positively or negatively impact the liquidity on these two historically different types of trading platforms and on the dealer-driven liquidity provision of swaps trading generally. I also encourage commenters to consider if there are alternatives to a government-imposed ban that could achieve the same regulatory objectives.

I would like to thank staff of the Division of Market Oversight for including several additional questions at my request designed to solicit targeted feedback on the potential effects of this Proposal.

[FR Doc. 2019–27895 Filed 12–30–19; 8:45 am]

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processing requirements that minimize the time between trade execution and acceptance for clearing.

[11] *E.g.,* ICI Letter at 3; MFA Letter at 3; SIFMA AMG Letter at 14.

[12] *E.g.,* FHLBanks Letter at 3; ICI Letter at 3–4; MFA Letter at 4; Vanguard Letter at 10.

[13] *E.g.,* FIA PTG Letter at 1; ICI Letter at 3; MFA Letter at 4.

[14] *E.g.,* ICI Letter at 3–4; MFA Letter at 4; SIFMA AMG Letter at 15; *see also* MRAC Meeting Transcript, *supra* note 2 (multiple panelists and committee members arguing that name give-up impairs buy-side SEF participation).

[15] *See supra* note 3. We note that at least one study of a U.S. securities trading platform found that post-trade anonymity had no impact on the quality of price quotes on the platform. K. Benhami, *Liquidity Providers' Valuation of Anonymity: The Nasdaq Market Makers Evidence* (2006 working paper). Another study on the South Korea Exchange found that post-trade disclosure of the order flow of major brokers to the entire market improved liquidity. T.P. Pham et al., *Intra-day Revelation of Counterparty Identity in the World's Best-Lit Market* (2016 working paper). On balance, however, the liquidity and other benefits of anonymous trading in financial markets appear well established.

[16] *See* Securities Industry & Financial Markets Ass'n (''SIFMA'') Letter at 1, 3–4. We also note the argument that post-trade anonymity allows participants to ''game'' the market. Under this scenario, a buy-side customer may undercut prices from dealers by posting aggressive orders to a dealer-to-dealer SEF's order book, then soliciting dealers through a request for quote on a dealer-to-client SEF in the hope that the dealers will provide more favorable quotes based on the order book pricing. *See, e.g.,* Request for Comment, 83 FR at 61,572; Tom Osborn, *How to Game a SEF: Banks Fear Arrival of Arbitrageurs,* Risk (Mar. 19, 2014); Madigan, *supra* note 2. We urge commenters to submit any evidence or indicia that such gaming is in fact occurring in other fully anonymous markets or would occur on SEFs if the proposed prohibition were implemented. We preliminarily believe that such conduct could constitute a disruptive trading practice or market manipulation prohibited by the CEA and potentially also subject to SEF disciplinary action. Such conduct may be best addressed by regulatory or self-regulatory authorities as appropriate, rather than via SEF participant ''self-help'' effectuated via name give-up.

[17] *See, e.g.,* International Swaps & Derivatives Ass'n (''ISDA''), *Swap Execution Facilities: Can They Improve the Structure of OTC Derivatives Markets?* 14–15 (Mar. 2011) (arguing that proposed SEF rules would reduce liquidity); SIFMA, *SIFMA Strongly Disagrees with CFTC's Final SEF Rules* (May 29, 2013) (same); Terry Flanagan, *Wholesale Brokers Criticize CFTC,* Markets Media (Oct. 3, 2011) (same).

[18] *See, e.g.,* Lynn Riggs et al., CFTC, *Swap Trading after Dodd-Frank: Evidence from Index CDS,* at 6, 52 (Aug. 17, 2019) (finding that SEF-traded index credit default swap markets are working relatively well following the Dodd-Frank reforms, though there is always room for improvement); Evangelos Benos, Richard Payne, & Michalis Vasios, *Centralized Trading, Transparency, and Interest Rate Swap Market Liquidity: Evidence from the Implementation of the Dodd-Frank Act,* Bank of England Staff Working Paper No. 580, at 31 (May 2018) (finding liquidity improvement for swaps subject to the SEF trading mandate); ISDA Comment Letter on 2018 SEF Proposed Rule, at 2 (''Certain aspects of the current swaps trading framework work well, and there have been some enhancements in market functioning, including improved liquidity and pre- and post-trade price transparency.''); ISDA, *SwapsInfo* (Sept. 30, 2019) (finding that SEF-traded credit derivatives represented 78.4% of total traded notional and 79.7% of trade count, and SEF-traded interest rate derivatives represented 55.4% of total traded notional and 60.9% of trade count).

[19] Swap Data Repositories—Access to SDR Data by Market Participants, 79 FR 16,673 (Mar. 26, 2014).

[20] Our thanks to the staff of the Commission's Division of Market Oversight (''DMO''), Office of the General Counsel, and Office of the Chief Economist who drafted and reviewed this proposal, particularly Aleko Stamoulis and Vince McGonagle of DMO.

[1] Post-Trade Name Give-up on Swap Execution Facilities, 83 FR 61571 (Nov. 30, 2018).

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 523

[BOP–1032–P]

RIN 1120–AA62

Good Conduct Time Credit Under the First Step Act

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: The Bureau of Prisons (Bureau) proposes to modify regulations on Good Conduct Time (GCT) credit to conform with recent legislative changes under the First Step Act (FSA), which would result in recalculation of the release date of most current inmates. However, as provided in the FSA, this change will not be effective until the Attorney General completes and releases the risk and needs assessment system.

DATES: Electronic comments must be submitted, and written comments must be postmarked, no later than 11:59 p.m. on March 2, 2020.

ADDRESSES: Please submit electronic comments through the regulations.gov website, or mail written comments to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street NW, Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 353–8248.

SUPPLEMENTARY INFORMATION:

Posting of Public Comments

Please note that all comments received are considered part of the public record and made available for public inspection online at www.regulations.gov. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted. If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment contains so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted *www.regulations.gov*.

Personal identifying information identified and located as set forth above will be placed in the agency's public docket file, but not posted online. Confidential business information identified and located as set forth above will not be placed in the public docket file. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

Introduction and Summary

In this document, the Bureau proposes to modify regulations on GCT credit to conform with recent legislative changes enacted in the First Step Act of 2018 (FSA), Public Law 115–391, December 21, 2018, 132 Stat 5194). Section 102(b) of the FSA amends 18 U.S.C. 3624(b) to indicate that inmates may receive up to 54 days of GCT credit for each year of *the sentence imposed by the court,* instead of for each year of *actual time served.* As a practical matter, the latter method had resulted in a cap of 47 days per year of credit, as explained and upheld in *Barber* v. *Thomas,* 560 U.S. 474 (2010). This proposed regulation amendment would support the recalculation under the FSA of the release date of most current inmates (other than those serving sentences for offenses committed before November 1, 1987, sentences of one year or less, and sentences to life imprisonment).

Under section 102(b)(2) of the FSA, the recalculation of GCT credit was not effective until the Attorney General completed and released the risk and needs assessment system on July 19, 2019.[1] Although this proposed regulation is not yet in effect, the Bureau re-calculated release dates beginning on July 19, 2019 under the statutory authority of the FSA. Based on these re-calculations, 3163 inmates were released from Bureau custody on July 19, 2019; the Bureau is in the process of completing recalculations for the remainder of the inmate population based on the FSA authority, prioritizing recalculations by proximity of projected release date, and releasing inmates as appropriate according to the recalculated GCT release dates.

The purposes of the proposed regulation amendment are to update the Bureau's current GCT regulations to be consistent with the FSA and to explain to the public and the inmate population how GCT will be calculated under the FSA.

Background

The regulation at 28 CFR 523.20 is the Bureau's interpretation of the former version of the GCT statute, 18 U.S.C. 3624(b)(1), enacted as part of the Prison Litigation Reform Act (PLRA), effective April 26, 1996. This, in turn, was based on the Bureau's historical interpretation of the first version of § 3624(b), enacted as part of the Sentencing Reform Act (SRA), effective November 1, 1987.

The SRA stated that inmates serving sentences of more than one year, other than those committed for life, would receive GCT credit toward the service of the inmate's sentence ''beyond the time served, of fifty-four days at the end of each year of his term of imprisonment, beginning at the end of the first year of the term,'' unless the Bureau determines that there have been disciplinary infractions warranting removal of credit. The SRA required the Bureau to make such a determination ''within fifteen days after the end of each year of the sentence,'' and required that GCT credit for the final year or portion of a year should be ''prorated and credited within the last six weeks of the sentence.'' 18 U.S.C. 3624(b) (1987).

Based on Section 3624(b)'s text, legislative and statutory history, and penological policies and interests involved in administration of the statute, the Bureau interpreted this statute to mean that GCT credit should be calculated based on the *amount of actual time served,* rather than *the length of the sentence imposed by the court.*

The Bureau reached this conclusion for the following reasons: First, section 3624(b) provided that an eligible inmate would receive GCT credit ''toward the service of his sentence, beyond the time served, of fifty-four days at the end of each year of his term of imprisonment, beginning at the end of the first year of the term, unless the Bureau of Prisons determines that, during that year, he has not satisfactorily complied with such

[1] Section 102(b)(2) of the First Step Act indicates that the amendments made by that section can only take effect after the Attorney General completes and releases a risk and needs assessment system described in section 101(a) of the First Step Act.

Section 101(a) amends 18 U.S.C. 3632(a) to require the Attorney General to consult with an Independent Review Committee, also authorized by the First Step Act, to develop a risk and needs assessment system. This risk and needs assessment system was publicly released on the Department of Justice website on July 19, 2019.

institutional disciplinary regulations[.]'' As a prisoner approaches the end of his sentence, GCT credit for ''the last year or portion of a year of the term of imprisonment shall be prorated and credited within the last six weeks of the sentence.'' The text of the statute indicated that GCT credit should be calculated on the basis of *time served* because of its repeated yearly requirements of calculation, behavioral compliance, and proration.

Second, the legislative history indicated that GCT credit was to be calculated on the basis of *time served*. *See* S. Rep. No. 98–225 at 56 (1983), reprinted in 1984 U.S.C.C.A.N. 3182 (''A sentence that exceeds one year may be adjusted at the end of each year by 36 days for a prisoner's compliance with institutional regulations . . . .''); *id.* at 147 (''[S]ection 3624(b) provides a uniform maximum rate of 36 days a year for all time in prison beyond the first year'').

Third, the statute that preceded section 3624(b), 18 U.S.C. 4161 (repealed), specifically directed deduction of GCT credit from the total ''term of [the prisoner's] sentence.'' Before enactment of the SRA, under 18 U.S.C. 4161 (repealed), GCT credit was to be ''deducted from the term of [a prisoner's] sentence beginning with the day on which the sentence commences to run.'' SRA's section 3624(b), on the other hand, required the award of GCT credit ''at the end of each year.'' The change conveyed the intent of Congress that GCT credit should be earned by a prisoner at the end of *each year actually served,* rather than automatically awarded at the beginning of the sentence.

GCT Under the Current Regulation

Under the current regulation and prior law:

- Inmates earn the first full 54 days of GCT credit only after 365 days of incarceration.
- The Bureau prorates the last year (or portion of the year) of the inmate's sentence.

The Bureau's interpretation of § 3624(b) credit was addressed in *Barber* v. *Thomas,* 560 U.S. 474 (2010)). The Supreme Court determined that ''[t]he statute's language and its purpose, taken together, convince us that the BOP's calculation method is lawful . . . [it] tracks the language of § 3624(b).'' *Barber, id.*at 480.

The Bureau previously awarded GCT credit such that an inmate served approximately 85% of his/her sentence.[2] The Bureau's interpretation of the former statute, as codified in its current rule, as requiring GCT credit to be awarded based on time served was consistently upheld as being reasonable. *See e.g., Brown* v. *McFadden,* 416 F.3d 1271, 1273 (11th Cir. 2005); *Yi* v. *Federal Bureau of Prisons,* 412 F.3d 526, 534 (4th Cir. 2005); *O'Donald* v. *Johns,* 402 F.3d 172, 174 (3rd Cir. 2005); *Perez-Olivio* v. *Chavez,* 394 F.3d 45, 53 (1st Cir. 2005); *White* v. *Scibana,* 390 F.3d 997, 1002–1003 (7th Cir. 2004); *Pacheco-Camacho* v. *Hood,* 272 F.3d 1266, 1267–1268 (9th Cir. 2001).

GCT Under the FSA

Section 102(b)(1) of the First Step Act (FSA) amended 18 U.S.C. 3624(b)(1) to require:

- That inmates serving a sentence of more than a year, other than a life sentence, receive GCT credit *up to 54 days for each year of the prisoner's sentence imposed by the court beginning at the end of the first year of the term*; and
- That *credit for the last year of a term of imprisonment shall be credited on the first day of the last year of the term of imprisonment.*

No other changes were made. Based on revised § 3624(b)'s text, the language of the FSA, and the penological policies and interests involved in administration of the statute, the Bureau formulated the following possible interpretations of this statute:

Alternative 1

The language of revised § 3624(b)(1) directs the Bureau to award GCT credit ''of up to 54 days for each year of the prisoner's sentence imposed by the court[.]'' [Emphasis added.] Since the statute no longer instructs the Bureau to prorate GCT credit for ''the portion of the year,'' it could be argued that this deletion means that if an inmate has less than 12 months for any part of his/her sentence, he/she earns no GCT credit for that portion of the sentence. This interpretation, however, ignores the first part of the statute, which instructs the Bureau to award GCT credit for the *full term imposed,* and therefore contravenes the apparent intent of Congress. Therefore, the Bureau believes this would be an erroneous and unfair interpretation.

Alternative 2

The revised language of the FSA says that an inmate ''may receive credit toward the service of the prisoner's sentence, of up to 54 days for each year of the prisoner's sentence imposed by the court,'' and that ''credit for the last year of a term of imprisonment shall be credited on the first day of the last year of the term of imprisonment.'' A generous reading of this language is that an inmate earns 54 days of credit each year, *and,* on the first day of the last chronological year of the service of his/her sentence, earns *another* 54 days.

This interpretation assumes that the phrase ''last year of a term of imprisonment'' is meant as the chronological last year of service, so that the inmate would receive 54 days of credit on the first day of the *last chronological year left to serve*. It could be argued that the intention of Congress in deleting the pro-ration language was that the Bureau should not prorate GCT credit at all during the final year of service, but instead award a full 54 days of GCT credit for *any portion* of the last chronological year.

However, this interpretation ignores two problems. The first part of the revision to the statute indicates that an inmate can receive a maximum of ''up to 54 days for each year of the prisoner's sentence imposed by the court,'' so awarding a full 54 days of GCT credit for less than a year remaining on an imposed sentence appears inconsistent with the intent of Congress.

Second, awarding 54 days of credit for any partial chronological last year presents the potential possibility of an inmate's release after his/her sentence should have ended. For instance, if an inmate's last chronological year consists of 10 days left to serve beginning on January 1st, but 54 days of GCT credit is awarded to that inmate on that date, then that inmate should have been released 44 days earlier. However, the inmate could not have been released earlier, because he/she would not have earned that 54 days of GCT credit until the first day of the last chronological year. This would result in some inmates receiving benefits incongruous with those received by others.

Finally, Congress used the same phrasing throughout the sentence—''the last year of a term of imprisonment''—which implies that they intended the phrase to be interpreted consistently and in context with the full subsection, such that a ''year'' as it relates to the

[2] For example, under the Bureau's current system (pre-FSA), an inmate with a 10-year sentence may earn up to 470 days of GCT credit, because GCT credit is based on *time served,* so the inmate would end up being released before the date on which the imposed sentence is set to expire. By contrast, under the FSA, an inmate with a 10-year sentence may earn a maximum of 540 days because GCT credit is based on *length of the sentence imposed,* whether or not the inmate has begun to serve the sentence. So, under the FSA, an inmate with a 10-year imposed sentence is eligible for 540 days of GCT credit.

''term of imprisonment'' refers to the sentence imposed.

The Supreme Court came to the same conclusion in *Barber:* ''The words 'term of imprisonment' in this phrase almost certainly refer to the sentence imposed, not to the time actually served (otherwise prisoners sentenced to a year and a day would become ineligible for credit as soon as they earned it).'' *Barber,* 560 U.S. at 483. *See also Brown* v. *Gardner,* 513 U.S. 115, 118 (1994) (presumption that a given term is used to mean the same thing throughout a statute).

Alternative 3

The FSA has not altered language in the statute indicating that GCT credit will only be awarded ''subject to determination by the Bureau of Prisons that, during that year, the prisoner has displayed exemplary compliance[.]'' The fact that this language has not changed from the prior version indicates that the Bureau must evaluate an inmate's conduct ''during the year,'' and that GCT credit should continue to be awarded *on the anniversary date after service of a year of sentence* consistent with *Barber* v. *Thomas,* 560 U.S. 474 (2010).

Based on this language, it is possible to argue that the Bureau should determine a projected release date based upon the length of an inmate's imposed sentence, with any portion of the sentence that is less than a full year calculated at a prorated amount. Under this interpretation, the inmate may receive up to 54 days GCT credit on the anniversary date of his/her imposed sentence until he reaches the projected release date, at which point his sentence will be satisfied.

However, if an inmate earns 54 days of GCT credit on the anniversary date of the last partial year remaining, but is determined by the Bureau to have failed to display ''exemplary compliance with institutional disciplinary regulations,'' then the statute is unclear regarding whether the Bureau may withhold GCT credit. The Bureau must determine whether inmates in this situation may be awarded GCT credit which is not subject to withholding since the inmate is no longer in custody. This issue highlights one of the conclusions drawn by the Supreme Court in *Barber,* that ''BOP's approach furthers the objective of § 3624'' in that it ''ties the award of good time credits directly to good behavior during the preceding year of imprisonment.''[3] *Barber,* 560 U.S. at 482–83.

Since we can only assume Congress was aware of this logical result and intended the revisions regardless, we believe it is reasonable and logical to interpret the statute as permitting the Bureau to require exemplary conduct even during the final period of an inmate's sentence, and therefore conclude that it is permissible for the Bureau to continue its practice of withholding GCT credit as a disciplinary sanction when necessary.

It is a longstanding principle that the Bureau has the authority to compute sentences and award credit.[4] *Barber,* 560 U.S. at 482–83. The Bureau believes that its method of calculating GCT ''comports with the language of the statute, effectuates the statutory design . . . enables inmates to calculate the time they must serve with reasonable certainty, and prevents certain inmates from earning GCT for time during which they were not incarcerated.'' *O'Donald* v. *Johns,* 402 F.3d 172, 174 (3d Cir. 2005).

BOP'S Interpretation Under The FSA

The Bureau believes that the interpretation described above in Alternative 3 is the most reasonable interpretation of the revised statute. The Bureau should determine a projected release date based upon the length of an inmate's imposed sentence, with any portion of the sentence that is less than a full year calculated at a prorated amount. The inmate may receive up to 54 days GCT credit on the anniversary date of his/her imposed sentence until he reaches the projected release date, at which point his/her sentence will be satisfied.[5]

Under this interpretation, more GCT credit is awarded than was awarded under the prior statute, resulting in inmates receiving a maximum of 54 days of credit for each year of the sentence imposed. It also remains consistent with the Supreme Court's analysis in *Barber* vs. *Thomas* by continuing to award GCT credit based on a requirement of ''earning'' credit after the service of the relevant period, thus recognizing that, as the statute indicates, 54 days is a *maximum* award and not a *required* award. While inmates ultimately might earn credit for days of the term that they did not serve, we assume Congress intended such a result.

It is also important to note that pursuant to Section 102(b)(3) of the FSA and 18 U.S.C. 3624(b)(1), this change will apply to all inmates except those serving life sentences, those serving sentences of one year or less, and those who committed the offenses for which they are currently imprisoned before November 1, 1987.[6] In some cases, due to judicial action, the Bureau will be required to recalculate a sentence or a portion of a sentence, including, in some cases, sentences or counts for which service has been completed.

The Bureau asserts that any new recalculation based on the revisions of the FSA does not constitute an untimely release and/or an unlawful restraint on liberty. Although the legislative history refers to this change as a ''fix'' to the Bureau's approach ''to accurately reflect congressional intent,'' 164 Cong. Rec. S7774 (daily ed. Dec. 18, 2018), there was nothing unlawful about the pre-First Step Act sentence credit system. Indeed, criminal defendants challenged the Bureau's methodology and urged the courts to adopt essentially the First Step Act's approach, but the Supreme Court rejected that challenge, holding instead that the Bureau's interpretation was ''the most natural reading'' of the statute. *Barber* v. *Thomas,* 560 U.S. 474, 476 (2010).

Literacy Requirement

The FSA did not change language indicating that, ''[i]n awarding credit under this section, the Bureau shall consider whether the prisoner, during the relevant period, has earned, or is making satisfactory progress toward earning, a high school diploma or an equivalent degree.'' In the current regulation, the Bureau interpreted this part of the statute to require inmates to earn or make satisfactory progress toward earning a General Educational Development (GED) credential.

In this proposed rule, however, we make a minor change to better conform to the language of the FSA. In so doing, we propose to modify the regulation to indicate that the Bureau will consider whether inmates have earned or are making satisfactory progress toward earning a high school diploma, equivalent degree, or Bureau-authorized alternative program credit. We published similar language as a proposed rule on January 9, 2015 (80 FR

[3] *Barber,* 560 U.S. at 482–83.

[4] *See United States* v. *Wilson,* 503 U.S. 329, 335 (1992); *United States* v. *Martinez,* 837 F.2d 861, 865–866 (9th Cir. 1988) (quoting *United States* v. *Clayton,* 588 F.2d 1288, 1292 (9th Cir. 1979)); *United States* v. *Evans,* 1 F.3d 654, 654 (7th Cir. 1993) (*citing Gonzalez* v. *United States,* 959 F.2d 211, 212 (11th Cir. 1992)).

[5] Mathematically, inmates will earn GCT credit in the amount of .148 times the number of days of their full term of imprisonment. (54 ÷ 365 = .148 GCT credit per day served).

[6] Section 102(b)(3) states: ''APPLICABILITY.—The amendments made by this subsection shall apply with respect to offenses committed before, on, or after the date of enactment of this Act, except that such amendments shall not apply with respect to offenses committed before November 1, 1987.''

1380) and received twenty-seven comments, most of which were in support of the change. We re-frame the proposed change now as part of this proposed rule and invite public comment once more.

This is an exercise of the Director's authority under 18 U.S.C. 3624(b)(4) to make exemptions to the GED requirements as she deems appropriate. Inmates who participate in or successfully complete an ''authorized alternative adult literacy program'' will not need to demonstrate satisfactory progress toward earning a GED credential to be considered for the full benefits of GCT. The purpose of this regulation is to exercise the Director's discretion to authorize alternative adult literacy programs which will more effectively meet the specialized needs of inmates (such as inmates who have limited English proficiency, in accordance with Executive Order 13166, or inmates facing learning obstacles), and will also enable those inmates to qualify for GCT even if they would not ordinarily qualify for the U.S.-based GED program.

It has also become apparent that the Bureau's Literacy Program does not meet the specific needs of certain groups of inmates, such as those who are not proficient in the English language or who will be released outside of the United States. For instance, according to officials from the Mexican Ministry of Education, GED certificates are not accepted by Mexican employers and government. Because of this, the Mexican Secundaria Program (the compulsory education for Mexican nationals) is a better alternative reentry program for inmates who will be released to Mexico than the U.S.-based GED program. Therefore, for individuals subject to a final order of removal, deportation, or exclusion whose primary language is Spanish and whose release country accepts the Mexican Secundaria certificates, the Mexican Secundaria Program is the better, more practical option.

The Bureau does not intend the Mexican Secundaria Program to be a literacy option for U.S. citizen inmates. U.S. citizen inmates without documented learning challenges are required to take the GED program to enhance their opportunities for successful post-release employment because GED certificates are the basic academic requirement for most entry-level jobs in the United States. However, inmates subject to a final order of removal, deportation, or exclusion remain eligible to participate in literacy programs under part 544, even though it is not required to qualify those inmates to earn GCT.

Another group of inmates whose needs may not be met by the GED program are those with learning challenges or obstacles, or those with unique intellectual and employment needs who may have already reached their optimum level of academic achievement. Under current regulations, inmates whose cognitive abilities have precluded them from being able to complete the GED tend to withdraw from the GED program or otherwise receive exemptions for not showing a gain in academic achievement scores. Under the proposed rule, these inmates also would be provided with the option of participating in ''authorized alternative adult literacy programs'' which would provide instruction in the development of life skills.

Regulatory Analyses

Executive Orders 12866, 13563, and 13771

This proposed rule falls within a category of actions that the Office of Management and Budget (OMB) has determined do not constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB.

The economic effects of this regulation are limited to the Bureau's appropriated funds. This rule is expected to result in greater awards of Good Conduct Time credit, which would reduce more terms of imprisonment. A greater reduction in terms of imprisonment would benefit both the inmates being released and the Bureau, which would then have marginal savings in resources, staff time, and bedspace. At this time, however, the Bureau cannot, with complete accuracy, estimate the monetary value of that cost/resource savings. However, given the current strain on the Bureau's resources, staff, and facilities, the Bureau would expect any anticipated savings generated by this rule to have minimal effect on the economy.

The average per capita cost for the Bureau to incarcerate an inmate is $90.10 per day. Earlier release dates will save the Bureau that amount; however, the specific number of days will vary widely depending on length of sentence and amount of GCT credited, and whether GCT is withheld for disciplinary sanctions or failing to meet literacy requirements. Therefore, specific savings cannot be calculated. Further, any savings resulting from the application of this regulation will only be realized upon an inmate's release, as his or her term of imprisonment is recalculated under this revised regulation. Therefore, the cost savings may not be fully realized until the revised projected release dates, which could be decades in the future.

For these reasons, it is not possible to forecast the actual cost savings which may be generated by the application of this regulation.

Executive Order 13132

This regulation will not have substantial direct effect on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, we determine that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation and by approving it certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This regulation pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This regulation will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This regulation is not a major rule as defined by the Congressional Review Act, 5 U.S.C. 804. This regulation will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 523

Prisoners.

Kathleen Hawk Sawyer,

Director, Federal Bureau of Prisons.

Under rulemaking authority vested in the Attorney General in 5 U.S.C. 301; 28 U.S.C. 509, 510 and delegated to the Director, Bureau of Prisons in 28 CFR 0.96, we propose to amend 28 CFR part 523 as follows:

SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER

PART 523—COMPUTATION OF SENTENCE

■ 1. The authority citation for 28 CFR part 523 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3568 (repealed November 1, 1987 as to offenses committed on or after that date), 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to conduct occurring on or after November 1, 1987), 4161–4166 (repealed October 12, 1984 as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510.

■ 2. Revise § 523.20 to read as follows:

§ 523.20 Good Conduct Time.

(a) *Good conduct time (GCT) credit.* The Bureau of Prisons (Bureau) typically awards GCT credit to inmates under conditions described in this section. GCT credit may be reduced if an inmate: (1) Commits prohibited acts which result in certain disciplinary sanctions (see part 541); or

(2) Fails to comply with literacy requirements in this section and part 544 of this chapter.

(b) *For inmates serving a sentence for offenses committed on or after November 1, 1987:* (1) The Bureau will initially determine a projected release date based on the length of an inmate's imposed sentence. The projected release date is subject to change during the inmate's incarceration.

(2) Any portion of a sentence that is less than a full year will be calculated at a prorated amount.

(3) An inmate may receive up to 54 days GCT credit on the anniversary date of his/her imposed sentence, subject to the requirements in this section.

(4) When the inmate reaches the Bureau-projected release date, the sentence will be satisfied/completed and the inmate will be eligible for release.

(c) *For inmates serving a sentence for offenses committed on or after November 1, 1987, but before September 13, 1994,* GCT credit is vested once received and cannot be withdrawn.

(d) *Literacy requirement.* (1) *For inmates serving a sentence for offenses committed on or after September 13, 1994, but before April 26, 1996,* all GCT credit will vest annually only for inmates who have earned, or are making satisfactory progress toward earning, a high school diploma, equivalent degree, or Bureau-authorized alternative program credit (see part 544 of this chapter).

(2) *For inmates serving a sentence for an offense committed on or after April 26, 1996,* the Bureau will award:

(i) Up to 54 days of GCT credit per year served on the anniversary date of his/her imposed sentence, if the inmate has earned or is making satisfactory progress toward earning a high school diploma, equivalent degree, or Bureau-authorized alternative program credit; or

(ii) Up to 42 days of GCT credit per year served on the anniversary date of his/her imposed sentence, if the inmate does not meet conditions described above (in (d)(2)(i)).

(3) *Aliens.* Notwithstanding the requirements of paragraphs (1) and (2), an alien who is subject to a final order of removal, deportation, or exclusion, is not required to participate in a literacy program to earn yearly awards of GCT credit. However, such inmates remain eligible to participate in literacy programs under part 544.

[FR Doc. 2019–27976 Filed 12–30–19; 8:45 am]

BILLING CODE 4410–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2018–0792; FRL–10003–83–Region 4]

Air Plan Approval; Alabama; 2010 1-Hour SO_2 NAAQS Transport Infrastructure

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve Alabama's August 20, 2018, State Implementation Plan (SIP) submission pertaining to the ''good neighbor'' provision of the Clean Air Act (CAA or Act) for the 2010 1-hour sulfur dioxide (SO_2) National Ambient Air Quality Standard (NAAQS). The good neighbor provision requires each state's implementation plan to address the interstate transport of air pollution in amounts that contribute significantly to nonattainment, or interfere with maintenance, of a NAAQS in any other state. In this action, EPA is proposing to determine that Alabama will not contribute significantly to nonattainment or interfere with maintenance of the 2010 1-hour SO_2 NAAQS in any other state. Therefore, EPA is proposing to approve the August 20, 2018, SIP revision as meeting the requirements of the good neighbor provision for the 2010 1-hour SO_2 NAAQS.

DATES: Written comments must be received on or before January 30, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2018–0792 at *http://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Michele Notarianni, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Ms. Notarianni can be reached via phone number (404) 562–9031 or via electronic mail at *notarianni.michele@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

A. Infrastructure SIPs

On June 2, 2010, EPA promulgated a revised primary SO_2 NAAQS with a level of 75 parts per billion (ppb), based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations. *See* 75 FR 35520 (June 22, 2010). Whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make SIP

submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. This particular type of SIP submission is commonly referred to as an ''infrastructure SIP.'' These submissions must meet the various requirements of CAA section 110(a)(2), as applicable.

Section 110(a)(2)(D)(i)(I) of the CAA requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from emitting any air pollutant in amounts that will contribute significantly to nonattainment, or interfere with maintenance, of the NAAQS in another state. The two clauses of this section are referred to as prong 1 (significant contribution to nonattainment) and prong 2 (interference with maintenance of the NAAQS).

In a letter dated August 20, 2018,[1] the Alabama Department of Environmental Management (ADEM) submitted a revision to the Alabama SIP only addressing prongs 1 and 2 of CAA section 110(a)(2)(D)(i)(I) for the 2010 1-hour SO_2 NAAQS.[2] EPA is proposing to approve ADEM's August 20, 2018, SIP submission because the State demonstrated that Alabama will not contribute significantly to nonattainment, or interfere with maintenance, of the 2010 1-hour SO_2 NAAQS in any other state. All other elements related to the infrastructure requirements of section 110(a)(2) for the 2010 1-hour SO_2 NAAQS for Alabama have been addressed in separate rulemakings.[3]

B. 2010 1-Hour SO_2 NAAQS Designations Background

In this action, EPA has considered information from the 2010 1-hour SO_2 NAAQS designations process, as discussed in more detail in section III.C of this notice. For this reason, a brief summary of EPA's designations process for the 2010 1-hour SO_2 NAAQS is included here.[4]

After the promulgation of a new or revised NAAQS, EPA is required to designate areas as ''nonattainment,'' ''attainment,'' or ''unclassifiable'' pursuant to section 107(d)(1) of the CAA. The process for designating areas following promulgation of a new or revised NAAQS is contained in section 107(d) of the CAA. The CAA requires EPA to complete the initial designations process within two years of promulgating a new or revised standard. If the Administrator has insufficient information to make these designations by that deadline, EPA has the authority to extend the deadline for completing designations by up to one year.

EPA promulgated the 2010 1-hour SO_2 NAAQS on June 2, 2010. *See* 75 FR 35520 (June 22, 2010). EPA completed the first round of designations (''round 1'')[5] for the 2010 1-hour SO_2 NAAQS on July 25, 2013, designating 29 areas in 16 states as nonattainment for the 2010 1-hour SO_2 NAAQS. *See* 78 FR 47191 (August 5, 2013). EPA signed **Federal Register** notices of promulgation for round 2 designations[6] on June 30, 2016 (81 FR 45039 (July 12, 2016)) and on November 29, 2016 (81 FR 89870 (December 13, 2016)), and round 3 designations[7] on December 21, 2017 (83 FR 1098 (January 9, 2018)).[8]

On August 21, 2015 (80 FR 51052), EPA separately promulgated air quality characterization requirements for the 2010 1-hour SO_2 NAAQS in the Data Requirements Rule (DRR). The DRR requires state air agencies to characterize air quality, through air dispersion modeling or monitoring, in areas associated with sources that emitted 2,000 tons per year (tpy) or more of SO_2, or that have otherwise been listed under the DRR by EPA or state air agencies. In lieu of modeling or monitoring, state air agencies, by specified dates, could elect to impose federally-enforceable emissions limitations on those sources restricting their annual SO_2 emissions to less than 2,000 tpy, or provide documentation that the sources have been shut down. EPA expected that the information generated by implementation of the DRR would help inform designations for the 2010 1-hour SO_2 NAAQS that must be completed by December 31, 2020 (''round 4'').

For Alabama, EPA designated all counties as attainment/unclassifiable or unclassifiable in round 3 except for a portion of Shelby County around the Lhoist North America of Alabama—Montevallo Plant (LNA—Montevallo) that is currently conducting monitoring to inform round 4 designations.[9] There are no nonattainment areas in Alabama for the 2010 1-hour SO_2 NAAQS based on rounds 1, 2, and 3 of EPA's designations process.[10]

II. Relevant Factors Used To Evaluate the 2010 1-Hour SO_2 Interstate Transport SIPs

Although SO_2 is emitted from a similar universe of point and nonpoint sources as is directly emitted fine particulate matter ($PM_{2.5}$) and the precursors to ozone and $PM_{2.5}$, interstate transport of SO_2 is unlike the transport of $PM_{2.5}$ or ozone because SO_2 emissions

[1] EPA received ADEM's August 20, 2018, SIP submission on August 27, 2018.

[2] On April 23, 2013, and October 24, 2017, ADEM submitted SIP revisions addressing all infrastructure elements with respect to the 2010 1-hour SO_2 NAAQS with the exception of prongs 1 and 2 of CAA section 110(a)(2)(D)(i)(I).

[3] EPA acted on all other infrastructure elements for the 2010 1-hour SO_2 NAAQS in Alabama's April 23, 2013, and October 24, 2017, SIP revisions on January 12, 2017 (82 FR 3637), October 12, 2017 (82 FR 47393), and July 6, 2018 (83 FR 31454).

[4] While designations may provide useful information for purposes of analyzing transport, particularly for a more source-specific pollutant such as SO_2, EPA notes that designations themselves are not dispositive of whether or not upwind emissions are impacting areas in downwind states. EPA has consistently taken the position that as to impacts, CAA section 110(a)(2)(D) refers only to prevention of ''nonattainment'' in other states, not to prevention of nonattainment in designated nonattainment areas or any similar formulation requiring that designations for downwind nonattainment areas must first have occurred. *See e.g.,* Clean Air Interstate Rule, 70 FR 25162, 25265 (May 12, 2005); Cross-State Air Pollution Rule, 76 FR 48208, 48211 (August 8, 2011); Final Response to Petition from New Jersey Regarding SO_2 Emissions From the Portland Generating Station, 76 FR 69052 (November 7, 2011) (finding facility in violation of the prohibitions of CAA section 110(a)(2)(D)(i)(I) with respect to the 2010 1-hour SO_2 NAAQS prior to issuance of designations for that standard).

[5] The term ''round'' in this instance refers to which ''round of designations.''

[6] EPA and state documents and public comments related to the round 2 final designations are in the docket at *regulations.gov* with Docket ID No. EPA–HQ–OAR–2014–0464 and at EPA's website for SO_2 designations at *https://www.epa.gov/sulfur-dioxide-designations.*

[7] EPA and state documents and public comments related to round 3 final designations are in the docket at *regulations.gov* with Docket ID No. EPA–HQ–OAR–2017–0003 and at EPA's website for SO_2 designations at *https://www.epa.gov/sulfur-dioxide-designations.*

[8] Consent Decree, *Sierra Club* v. *McCarthy,* Case No. 3:13–cv–3953–SI (N.D. Cal. Mar. 2, 2015). This consent decree requires EPA to sign for publication in the **Federal Register** notices of the Agency's promulgation of area designations for the 2010 1-hour SO_2 NAAQS by three specific deadlines: July 2, 2016 (''round 2''); December 31, 2017 (''round 3''); and December 31, 2020 (''round 4'').

[9] *See Technical Support Document: Chapter 3 Final Round 3 Area Designations for the 2010 1-Hour SO_2 Primary National Ambient Air Quality Standard for Alabama* at *https://www.epa.gov/sites/production/files/2017-12/documents/03-al-so2-rd3-final.pdf.*

[10] On August 5, 2013 (78 FR 47191) and effective October 4, 2013, EPA designated 29 areas in 16 states as nonattainment for the 2010 1-hour SO_2 NAAQS based on violating monitors using air quality data for the years 2009–2011, but did not, at that time, designate other areas in the country. On July 12, 2016 (81 FR 45039), effective September 12, 2016, and December 13, 2016 (81 FR 89870), effective January 12, 2017, EPA published a final rule establishing air quality designations for 65 areas in 24 states for the 2010 SO_2 NAAQS including seven nonattainment areas, 41 attainment/unclassifiable areas, and 17 unclassifiable areas. On January 9, 2018 (83 FR 1098) effective April 9, 2018, EPA designated six areas as nonattainment; 23 areas designated unclassifiable; and the rest of the areas covered by this round in all states, territories, and tribal lands were designated attainment/unclassifiable. No areas in Alabama were designated as nonattainment in these actions. *See https://www.epa.gov/sulfur-dioxide-designations/sulfur-dioxide-designations-regulatory-actions.*

sources usually do not have long range SO_2 impacts. The transport of SO_2 relative to the 2010 1-hour SO_2 NAAQS is more analogous to the transport of lead (Pb) relative to the Pb NAAQS in that emissions of SO_2 typically result in 1-hour pollutant impacts of possible concern only near the emissions source. However, ambient 1-hour concentrations of SO_2 do not decrease as quickly with distance from the source as do 3-month average concentrations of Pb, because SO_2 gas is not removed by deposition as rapidly as are Pb particles and because SO_2 typically has a higher emissions release height than Pb. Emitted SO_2 has wider ranging impacts than emitted Pb, but it does not have such wide-ranging impacts that treatment in a manner similar to ozone or $PM_{2.5}$ would be appropriate. Accordingly, while the approaches that the EPA has adopted for ozone or $PM_{2.5}$ transport are too regionally focused, the approach for Pb transport is too tightly circumscribed to the source. SO_2 transport is therefore a unique case and requires a different approach.

In SO_2 transport analyses, EPA focuses on a 50 km-wide zone because the physical properties of SO_2 result in relatively localized pollutant impacts near an emissions source that drop off with distance. Given the properties of SO_2, EPA selected a spatial scale with dimensions from four to 50 kilometers (km) from point sources—the ''urban scale''—to assess trends in area-wide air quality that might impact downwind states.[11] As discussed further in section III.B, EPA selected the urban scale as appropriate for assessing trends in both area-wide air quality and the effectiveness of large-scale pollution control strategies at SO_2 point sources. EPA's selection of this transport distance for SO_2 is consistent with 40 CFR 58, Appendix D, Section 4.4.4(4) ''Urban scale,'' which states that measurements in this scale would be used to estimate SO_2 concentrations over large portions of an urban area with dimensions from four to 50 km. The American Meteorological Society/Environmental Protection Agency Regulatory Model (AERMOD) is EPA's preferred modeling platform for regulatory purposes for near-field dispersion of emissions for distances up to 50 km. *See* Appendix W of 40 CFR part 51. Thus, EPA applied the 50-km threshold as a reasonable distance to evaluate emission source impacts into neighboring states and to assess air quality monitors within 50 km of the State's border, which is discussed further in section III.C.

As discussed in sections III.C and III.D, EPA first reviewed Alabama's analysis to assess how the State evaluated the transport of SO_2 to other states, the types of information used in the analysis, and the conclusions drawn by the State. EPA then conducted a weight of evidence analysis based on a review of the State's submission and other available information, including SO_2 air quality and available source modeling for other states' sources within 50 km of the Alabama border.[12]

III. Alabama's SIP Submission and EPA's Analysis

A. State Submission

Through a letter dated August 20, 2018, ADEM submitted a revision to the Alabama SIP addressing prongs 1 and 2 of CAA section 110(a)(2)(D)(i)(I) for the 2010 1-hour SO_2 NAAQS.[13] Alabama conducted a weight of evidence analysis to examine whether SO_2 emissions from the State adversely affect attainment or maintenance of the 2010 1-hour SO_2 NAAQS in downwind states.

ADEM based its conclusions for prongs 1 and 2 on attaining 2015–2017 SO_2 design values (DVs)[14] in Alabama and adjacent states; the lack of 2010 1-hour SO_2 NAAQS nonattainment areas in Alabama or within close proximity to Alabama; the existence of DRR modeling for Alabama SO_2 sources; and established federal and State control measures which address SO_2 emissions. EPA's evaluation of Alabama's August 20, 2018, SIP submission is detailed in sections III.B, C, and D.

B. EPA's Evaluation Methodology

EPA believes that a reasonable starting point for determining which sources and emissions activities in Alabama are likely to impact downwind air quality in other states with respect to the 2010 1-hour SO_2 NAAQS is by using information in EPA's National Emissions Inventory (NEI).[15] The NEI is a comprehensive and detailed estimate of air emissions for criteria pollutants, criteria pollutant precursors, and hazardous air pollutants from air emissions sources, that is updated every three years using information provided by the states and other information available to EPA. EPA evaluated data from the 2014 NEI (version 2), the most recently available, complete, and quality assured dataset of the NEI.

As shown in Table 1, the majority of SO_2 emissions in Alabama originate from point sources.[16] In 2014, the total SO_2 emissions from point sources in Alabama comprised approximately 96 percent of the total SO_2 emissions in the State. Further analysis of these data show that SO_2 emissions from fuel combustion from point sources make up approximately 74 percent of the total SO_2 emissions in the State. Because emissions from the other listed source categories are more dispersed throughout the State, those categories are less likely to cause high ambient concentrations when compared to a point source on a ton-for-ton basis. Based on EPA's analysis of the 2014 NEI, EPA believes that it is appropriate to focus the analysis on SO_2 emissions from Alabama's larger point sources (*i.e.,* emitting over 100 tpy of SO_2 in 2017), which are located within the ''urban scale,'' *i.e.,* within 50 km of one or more state borders.

[11] For the definition of spatial scales for SO_2, see 40 CFR part 58, Appendix D, section 4.4 (''Sulfur Dioxide (SO_2) Design Criteria''). For further discussion on how EPA applies these definitions with respect to interstate transport of SO_2, *see* EPA's proposed rulemaking on Connecticut's SO_2 transport SIP. *See* 82 FR 21351, 21352, 21354 (May 8, 2017).

[12] This proposed approval action is based on the information contained in the administrative record for this action and does not prejudge any other future EPA action that may make other determinations regarding Alabama's air quality status. Any such future actions, such as area designations under any NAAQS, will be based on their own administrative records and EPA's analyses of information that become available at those times. Future available information may include, and is not limited to, monitoring data and modeling analyses conducted pursuant to the DRR and information submitted to EPA by states, air agencies, and third-party stakeholders such as citizen groups and industry representatives.

[13] On September 5, 2019, September 20, 2019, September 25, 2019, December 2, 2019, and December 6, 2019, ADEM provided supplemental information pertaining to Escambia Operating Company—Big Escambia Creek Plant's (Big Escambia's) DRR modeling that addresses and resolves the issues with the original modeling for this source performed under the DRR (collectively, the ''Big Escambia Supplement''). See Section III.C.1.b. for more information. Big Escambia is located in Escambia County, Alabama.

[14] A ''Design Value'' is a statistic that describes the air quality status of a given location relative to the level of the NAAQS. The DV for the primary 2010 1-hour SO_2 NAAQS is the 3-year average of annual 99th percentile daily maximum 1-hour values for a monitoring site. For example, the 2017 DV is calculated based on the three-year average from 2015–2017. The interpretation of the primary 2010 1-hour SO_2 NAAQS including the data handling conventions and calculations necessary for determining compliance with the NAAQS can be found in Appendix T to 40 CFR part 50.

[15] EPA's NEI is available at *https://www.epa.gov/air-emissions-inventories/national-emissions-inventory*.

[16] Alabama's point sources listed in Table 1, for the purposes of this action, are comprised of all of the ''Fuel Combustion'' categories and ''Industrial Processes (All Categories),'' with the exception of residential fuel consumption. Residential fuel combustion is considered a nonpoint source and, thus, residential fuel combustion data is not included in the point source fuel combustion data and related calculations.

TABLE 1—SUMMARY OF 2014 NEI (VERSION 2) SO_2 DATA FOR ALABAMA BY SOURCE TYPES

Category	Emissions (tpy)	Percent of total SO_2 emissions
Fuel Combustion: Electric Generating Units (EGUs) (All Fuel Types)	119,922.45	60
Fuel Combustion: Industrial Boilers/Internal Combustion Engines (All Fuel Types)	27,658.08	14
Fuel Combustion: Commercial/Institutional (All Fuel Types)	13.58	0
Fuel Combustion: Residential (All Fuel Types)	84.40	0
Industrial Processes (All Categories)	43,805.93	22
Mobile Sources (All Categories)	1,528.60	1
Fires (All Types)	7,585.65	4
Waste Disposal	814.84	0
Solvent Processes	0.62	0
Miscellaneous (Non-Industrial, Gas Stations)	3.67	0
SO_2 Emissions Total	201,417.82	100

As explained in Section II, because the physical properties of SO_2 result in relatively localized pollutant impacts near an emissions source that drop off with distance, in SO_2 transport analyses, EPA focuses on a 50 km-wide zone. Thus, EPA focused its evaluation on Alabama's point sources of SO_2 emissions located within approximately 50 km of another state and their potential impact on neighboring states.

As discussed in section I.B., EPA's current implementation strategy for the 2010 1-hour SO_2 NAAQS includes the flexibility to characterize air quality for stationary sources subject to the DRR via either data collected at ambient air quality monitors sited to capture the points of maximum concentration, or air dispersion modeling (hereinafter referred to as ''DRR monitors'' or ''DRR modeling,'' respectively). EPA's assessment of SO_2 emissions from Alabama's point sources located within approximately 50 km of another state and their potential impacts on neighboring states (see sections III.C.1. and II.C.2 of this notice) and SO_2 air quality data at monitors within 50 km of the Alabama border (see section III.C.3. of this notice) is informed by all available data at the time of this proposed rulemaking.[17]

As described in Section III, EPA proposes to conclude that an assessment of Alabama's satisfaction of the prong 1 and 2 requirements under section 110(a)(2)(D)(i)(I) of the CAA for the 2010 1-hour SO_2 NAAQS may be reasonably based upon evaluating the downwind impacts via modeling and an assessment of SO_2 emissions from Alabama's point sources emitting more than 100 tpy of SO_2 (including fuel combustion sources) that are located within approximately 50 km of another state and upon any regulations intended to address Alabama's SO_2 point sources.

C. EPA's Prong 1 Evaluation—Significant Contribution to Nonattainment

Prong 1 of the good neighbor provision requires states' plans to prohibit emissions that will contribute significantly to nonattainment of a NAAQS in another state. ADEM states in its submission that Alabama does not contribute significantly to nonattainment of the 2010 1-hour SO_2 NAAQS in another state based on the information provided therein. To evaluate Alabama's satisfaction of prong 1, EPA assessed Alabama's SIP submission with respect to the following factors: (1) Potential ambient air quality impacts of SO_2 emissions from certain facilities in Alabama on neighboring states based on available air dispersion modeling results; (2) SO_2 emissions from Alabama sources; (3) SO_2 ambient air quality for Alabama and neighboring states; (4) SIP-approved Alabama regulations that address SO_2 emissions; and (5) federal regulations that reduce SO_2 emissions at Alabama sources. A detailed discussion of Alabama's SIP submission with respect to each of these factors follows. EPA proposes that these factors, taken together, support the Agency's proposed determination that Alabama will not contribute significantly to nonattainment of the 2010 1-hour SO_2 NAAQS in another state. EPA's proposed conclusion is based, in part, on the fact that adjacent states with modeled DRR sources located within 50 km of the Alabama border do not have areas that are violating or that model violations of the 2010 1-hour SO_2 NAAQS and the fact that the valid SO_2 2016–2018 DVs for monitors in adjacent states show attainment of the 2010 1-hour SO_2 NAAQS.[18] Also, 2017 SO_2 emissions for Alabama's non-DRR sources emitting over 100 tons of SO_2 within 50 km of another state are at distances or emit levels of SO_2 that make it unlikely that these SO_2 emissions could interact with SO_2 emissions from the neighboring states' sources in such a way as to contribute significantly to nonattainment in these neighboring states. In addition, the downward trends in statewide SO_2 emissions, combined with federal and SIP-approved State regulations affecting SO_2 emissions from Alabama's sources, further support EPA's proposed conclusion.

1. SO_2 Designations Air Dispersion Modeling

a. State Submission

[17] EPA notes that the evaluation of other states' satisfaction of section 110(a)(2)(D)(i)(I) for the 2010 1-hour SO_2 NAAQS can be informed by similar factors found in this proposed rulemaking but may not be identical to the approach taken in this or any future rulemaking for Alabama, depending on available information and state-specific circumstances.

[18] The Floyd County, Georgia monitor (AQS ID: 13–115–0003) does not have a valid DV for the 2015–2017 and 2016–2018 time periods. This monitor has valid DVs for the 2010–2012 through 2014–2016 time periods which declined over this period and are all below the level of the 2010 1-hour SO_2 NAAQS.

In its August 20, 2018, SIP submission, ADEM referenced a January 14, 2016, letter [19] that the State submitted to EPA identifying the facilities in Alabama with SO_2 emissions subject to the DRR.[20] ADEM explained that the DRR modeling data is contained in EPA's technical support document (TSD) for the SO_2 round 3 area designations.[21]

b. EPA Analysis

EPA evaluated available DRR modeling data for sources in Alabama within 50 km of another state, including the Big Escambia Supplement, and available DRR modeling data for sources in the adjacent states of Florida, Georgia, Mississippi, and Tennessee that are within 50 km of the Alabama border.[22] The purpose of evaluating DRR modeling results in adjacent states within 50 km of the Alabama border is to ascertain whether any nearby sources in Alabama are impacting a violation of the 2010 1-hour SO_2 NAAQS in another state.

Of the 15 sources in Alabama initially subject to the DRR, 10 sources conducted dispersion modeling.[23] Six of the 10 modeled sources are within 50 km of another state: Akzo Nobel Functional Chemicals—Lemoyne Site (AkzoNobel); Alabama Power Company—James M. Barry Electric Generating Plant (Plant Barry); Ascend Performance Materials—Decatur Plant (Ascend); Big Escambia; PowerSouth Energy Cooperative—Charles R. Lowman Power Plant (Lowman); and Continental Carbon Company—Phenix City Plant (Continental Carbon).[24] With respect to Continental Carbon, EPA previously determined that the modeling and supporting information provided to meet DRR requirements was acceptable.[25] With respect to the modeling and other information submitted by the State for the remaining five modeled Alabama sources within 50 km of another state (*i.e.,* AkzoNobel, Ascend, Big Escambia, Lowman, and Plant Barry), EPA previously determined that the Agency does not have sufficient information to demonstrate whether the areas around these sources meet or do not meet the 2010 1-hour SO_2 NAAQS or contribute to an area that does not meet the standard, and thus designated these areas as unclassifiable.[26] Although EPA does not have any indications that there are violations of the 2010 1-hour SO_2 NAAQS in these areas, the Agency assessed AkzoNobel, Ascend, Lowman, and Plant Barry in section III.C.2.b. of this proposed action with respect to interstate transport for the 2010 1-hour SO_2 NAAQS. Regarding Big Escambia, ADEM provided supplemental information in September and December of 2019 that addresses the issues with the original modeling for this source performed under the DRR for the purposes of evaluating interstate transport of SO_2 from Alabama into Florida.[27] EPA's TSD for Big Escambia summarizes the issues with the original DRR modeling and how ADEM has now addressed these issues for the purpose of evaluating potential ambient air impacts in the neighboring state of Florida.[28] Table 2 provides a summary of the 99th percentile daily maximum 1-hour average concentrations estimated by the modeling for Big Escambia and Continental Carbon, which are based on actual emissions for Big Escambia and potential to emit (PTE) emissions for Continental Carbon. Alabama's modeling analyses for Big Escambia and Continental Carbon indicate that the maximum impacts did not exceed the level of the 2010 1-hour SO_2 NAAQS in neighboring states. Based on the modeling results indicating that the maximum impacts did not exceed the level of the 2010 1-hour SO_2 NAAQS in neighboring states, no further analysis is necessary for assessing the potential impacts of the interstate transport of SO_2 emissions from these facilities.

[19] Alabama's January 14, 2016, letter is available on *www.regulations.gov* at Docket ID No. EPA–HQ–OAR–2017–0003.

[20] In 2017, Alabama provided recommendations and submitted air dispersion modeling for the 2010 1-hour SO_2 NAAQS for the DRR sources in the State which elected to comply with the DRR using modeling. The remainder of Alabama's DRR sources established federally-enforceable limits, shut down, or the State installed and began operation of new, approved SO_2 monitors to characterize SO_2 air quality around the source. *See https://www.epa.gov/so2-pollution/so2-data-requirements-rule-january-13-2017-state-submittals-alabama.*

[21] *See Technical Support Document: Chapter 3 Final Round 3 Area Designations for the 2010 1-Hour SO_2 Primary National Ambient Air Quality Standard for Alabama at https://www.epa.gov/sites/production/files/2017-12/documents/03-al-so2-rd3-final.pdf. See also Technical Support Document: Chapter 3 Proposed Round 3 Area Designations for the 2010 1-Hour SO_2 Primary National Ambient Air Quality Standard for Alabama* at *https://www.epa.gov/sites/production/files/2017-08/documents/3_al_so2_rd3-final.pdf.*

[22] As discussed in section I.B., Alabama used air dispersion modeling to characterize air quality in the vicinity of certain SO_2 emitting sources to identify the maximum 1-hour SO_2 concentrations in ambient air which informed EPA's round 3 SO_2 designations. EPA's preferred modeling platform for regulatory purposes is AERMOD (Appendix W of 40 CFR part 51). In these DRR modeling analyses using AERMOD, the impacts of the actual emissions for one or more of the recent 3-year periods (*e.g.,* 2012–2014, 2013–2015, 2014–2016) were considered, and in some cases, the modeling was of currently effective limits on allowable emissions in lieu of or as a supplement to modeling of actual emissions. The available air dispersion modeling of certain SO_2 sources can support transport related conclusions about whether sources in one state are potentially contributing significantly to nonattainment or interfering with maintenance of the 2010 1-hour SO_2 standard in other states. While AERMOD was not designed specifically to address interstate transport, the 50-km distance that EPA recommends for use with AERMOD aligns with the concept that there are localized pollutant impacts of SO_2 near an emissions source that drop off with distance. Thus, EPA believes that the use of AERMOD provides a reliable indication of air quality for transport purposes.

[23] Of the remaining five sources in Alabama initially subject to the DRR which did not opt to conduct dispersion modeling, three sources accepted federally-enforceable permit limits to exempt out of the DRR requirements, one source provided documentation that the facility shut down, and one source installed a monitor. The three sources that accepted federally-enforceable permit limits to exempt out of the DRR requirements are: Alabama Power—Gadsden Electric Generating Plant; Alabama Power—Greene County Electric Generating Plant; and Tennessee Valley Authority (TVA)—Colbert Fossil Plant. Alabama's one DRR source which shut down is the TVA—Widows Creek Fossil Plant. As mentioned in Section I.B., LNA—Montevallo installed a monitor to inform round 4 designations. *See* Docket ID No. EPA–HQ–OAR–2017–0003.

[24] The Mobile County area includes two DRR sources: AkzoNobel and Plant Barry. Due to the close proximity of AkzoNobel and Plant Barry to each other, a combined air dispersion modeling analysis was conducted for both facilities pursuant to the DRR.

[25] *See https://www.epa.gov/sites/production/files/2017-08/documents/3_al_so2_rd3-final.pdf.*

[26] *See* EPA's initial and final TSDs for Alabama at: *https://www.epa.gov/sites/production/files/2017-08/documents/3_al_so2_rd3-final.pdf* and *https://www.epa.gov/sites/production/files/2017-12/documents/03-al-so2-rd3-final.pdf.*

[27] ADEM submitted the Big Escambia Supplement to EPA in separate correspondence dated September 5, 2019, September 20, 2019, September 25, 2019, December 2, 2019, and December 6, 2019, and it is included in the docket for this proposed action, with the exception of certain files due to their nature and size and incompatibility with the Federal Docket Management System. These files are available at the EPA Region 4 office for review. To request these files, please contact the person listed in this notice under the section titled **FOR FURTHER INFORMATION CONTACT**.

[28] EPA's TSD addressing Big Escambia for this proposed rulemaking is located in the docket.

TABLE 2—ALABAMA SOURCES WITH VALID[29] DRR MODELING LOCATED WITHIN 50 km OF ANOTHER STATE

DRR source	County	Approximate distance from source to adjacent State (km)	Other facilities included in modeling	Modeled 99th percentile daily maximum 1-hour SO_2 concentration in nearest neighboring state (ppb)	Model grid extends into another State?
Big Escambia	Escambia	8 (FL)	Escambia Operating Company-Flomaton (AL) and Breitburn Operating, L.P. (FL).	58.8 ppb (FL) (*based on 2013–2015 actual emissions for the thermal oxidizer at Big Escambia and allowable/PTE emissions for the remaining units at Big Escambia and the nearby sources).*	Yes, into FL (the northern portion of Escambia County, FL).
Continental Carbon.	Russell	1 (GA)	IIG MinWool LLC (AL)	38.9 (GA) (*based on PTE emissions).*	Yes, into GA (the southwestern portion of Muscogee County and the northwestern portion of Chattahoochee County).

Table 3 provides a summary of the modeling results for the four DRR sources in neighboring states which are located within 50 km of Alabama and which elected to provide air dispersion modeling under the DRR: Gulf Power Company—Crist Electric Generating Station (Crist) in Florida; Georgia Power—Plant Bowen (Plant Bowen) and Georgia Power—Plant Wansley (Plant Wansley) in Georgia; and Mississippi Power Company's Victor J. Daniel Steam Electric Generating Plant (Plant Daniel) in Mississippi. The modeling results for all four sources indicated that the maximum impacts did not exceed the level of the 2010 1-hour SO_2 NAAQS.[30]

TABLE 3—OTHER STATES' SOURCES WITH DRR MODELING LOCATED WITHIN 50 km OF ALABAMA

DRR source	County (state)	Approximate distance from source to Alabama border (km)	Other facilities included in modeling	Modeled 99th percentile daily maximum 1-hour SO_2 concentration (ppb) *	Model grid extends into another state?
Crist	Escambia (FL)	17	Yes—International Paper Pensacola Facility.	33.8	No.
Plant Bowen	Bartow (GA)	46	No	57.6	No.
Plant Wansley ..	Heard (GA)	24	Yes—Georgia Power—Plant Yates; Municipal Electric Authority of Georgia; Chattahoochee Energy Facility; and Wansley Combined-Cycle Generating Plant.	15	No.
Plant Daniel	Jackson (MS) ...	14	None	56.5	Yes—into AL (a portion of extreme southwest AL west of Mobile County, AL).

* The modeled 99th percentile daily maximum 1-hour SO_2 concentrations are based on: 2012–2014 actual SO_2 emissions for Crist and Plant Daniel; 2012–2014 actual SO_2 emissions for Plant Wansley; PTE for the other sources included in Plant Wansley's modeling; and 2014–2016 actual SO_2 emissions for Plant Bowen.

EPA believes that the modeling results in Tables 2 and 3, weighed along with other factors in this notice, support EPA's proposed conclusion that sources in Alabama will not contribute significantly to nonattainment of the 2010 1-hour SO_2 NAAQS in any other state.

2. SO_2 Emissions Analysis

a. State Submission

With respect to emissions trends, ADEM states that significant SO_2 emissions reductions have resulted from the implementation of several federal programs in Alabama. These federal programs are identified in section III.C.5 of this notice.

b. EPA Analysis

EPA reviewed statewide and EGU SO_2 emissions in Alabama from the NEI for the years 2005, 2008, 2011, and 2014 to examine any trends in SO_2 emissions over this period. As shown in Table 4, Alabama's statewide SO_2 emissions have declined by 66 percent from 592,670 tons in 2002 to 201,418 tons in 2014. Alabama EGU SO_2 emissions decreased by 74 percent from 461,634 tons in 2005 to 119,976 tons in 2014.

[29] As used in the heading for this table, the term ''valid'' means valid for the purpose of evaluating impacts for interstate transport of the 2010 1-hour SO_2 NAAQS from Alabama in neighboring states.

[30] Although the modeling grids for Crist, Plant Bowen, and Plant Wansley do not extend into Alabama, EPA finds that the model results for these sources which show that the maximum impacts did not exceed the level of the 2010 1-hour SO_2 NAAQS indicate that there is not a transport issue in the areas modeled for which there is data.

TABLE 4—ALABAMA SO_2 EMISSIONS (tons) FROM THE NEI

	2005 NEI	2008 NEI (Version 3)	2011 NEI (Version 2)	2014 NEI (Version 2)
Total SO_2 Emissions	592,670	443,810	278,364	201,418
SO_2 Emissions from EGUs	461,634	362,671	179,849	119,976

As discussed in section III.B., EPA also finds that it is appropriate to examine the impacts of SO_2 emissions from stationary sources emitting greater than 100 tons of SO_2 in Alabama at distances ranging from zero km to 50 km from a neighboring state's border. Therefore, in addition to those sources addressed in section III.C.1.b. of this notice, EPA also assessed the potential impacts of SO_2 emissions from stationary sources not subject to the DRR that emitted over 100 tons of SO_2 in 2017 and are located in Alabama within 50 km from the border.[31] EPA assessed this information to evaluate whether the SO_2 emissions from these sources could interact with SO_2 emissions from the nearest source in a neighboring state in such a way as to impact a violation of the 2010 1-hour SO_2 NAAQS in that state. Table 5 lists sources in Alabama not subject to the DRR that emitted greater than 100 tpy of SO_2 in 2017 within 50 km of the State's border.

Currently, EPA does not have monitoring or modeling data suggesting that Florida, Georgia, North Carolina, and Tennessee are impacted by SO_2 emissions from the 14 Alabama sources not subject to the DRR listed in Table 5. Of these 14 Alabama sources, 10 are located over 50 km from the nearest source in another state emitting over 100 tons of SO_2. EPA believes that the distances greater than 50 km between sources make it unlikely that SO_2 emissions from the 10 Alabama sources could interact with SO_2 emissions from the neighboring states' nearest sources in Table 5 in such a way as to contribute significantly to nonattainment in Florida, Georgia, Mississippi, and Tennessee.

TABLE 5—ALABAMA NON-DRR SO_2 SOURCES EMITTING GREATER THAN 100 tpy IN 2017 NEAR NEIGHBORING STATES

Alabama source	2017 Annual SO_2 emissions (tons)	Approximate distance to Alabama border (km)	Closest neighboring state	Approximate distance to nearest neighboring state SO_2 source (km)	Nearest neighboring state non-DRR SO_2 source & 2017 emissions (>100 tons SO_2)
American Midstream Chatom, LLC.	948	5	Mississippi	44	Petro Harvester Operating Company LLC—South Cypress Creek (Petro-Cypress Creek) (128 tons).
Evonik Corporation	225	25	Mississippi	41	Plant Daniel (204 tons).
ExxonMobil Production Company.	157	19	Mississippi	37	Plant Daniel (204 tons).
Georgia-Pacific (Penington)	1,236	37	Mississippi	70	Petro-Cypress Creek (128 tons).
Georgia-Pacific Brewton LLC	103	8	Florida	16	Breitburn Operating LP (1,491 tons).
Georgia-Pacific Cedar Springs LLC.	512	<5	Georgia	96	Georgia Power Company—Plant Mitchell (633 tons in 2015).
Hilcorp Energy Company	126	33	Mississippi	60	Plant Daniel (204 tons).
MeadWestvaco Mahrt Mill	222	<5	Georgia	85	C–E Minerals Plants 1, 2, and 6 (292 tons).
Mineral Manufacturing Corporation.	182	5	Georgia	109	C–E Minerals Plants 1, 2, and 6 (292 tons).
Nucor Steel Decatur LLC	110	39	Tennessee	102	Steel Dynamics Columbus (457 tons).
Rock-Tenn Mill Company, LLC.	250	38	Mississippi	90	Petro-Cypress Creek (128 tons).
SSAB Alabama Inc	381	39	Mississippi	70	Plant Daniel (204 tons).
Tennessee Alloys Corporation	671	<5 9	Tennessee and Georgia.	93	Resolute Forest Products—Calhoun Operations (TN)—(218 tons).
Union Oil of California—Chunchula Gas Plant.	* 105	29	Mississippi	60	Plant Daniel (204 tons).

* (2016 Emissions).

There are four Alabama sources not subject to the DRR that are located at or less than 50 km from the nearest source in another state which emit greater than 100 tons of SO_2: American Midstream Chatom, LLC; Evonik Corporation; ExxonMobil Production Company; and Georgia-Pacific Brewton LLC. EPA believes that the relatively low SO_2 emissions of each of these four Alabama sources combined with the emissions from the nearest sources emitting greater than 100 tons of SO_2 in neighboring states make it unlikely that the SO_2 emissions from these four Alabama

[31] 2017 emissions are the latest available data for these sources in Alabama.

sources could interact with SO_2 emissions from the neighboring states' sources in such a way as to contribute significantly to nonattainment in the neighboring states of Florida, Georgia, Mississippi, and Tennessee.

In addition, EPA evaluated 2017 SO_2 emissions data for four of the five DRR sources for which EPA could not rely on existing DRR modeling to assess their impacts for interstate transport for the 2010 1-hour SO_2 NAAQS on other states: AkzoNobel, Ascend, Lowman, and Plant Barry. Table 6 provides annual 2017 SO_2 emissions data along with the distances to the closest neighboring state's sources emitting over 100 tpy of SO_2.[32] Table 7 shows the SO_2 emissions trends for these sources from 2012–2017 (and 2018 if data is available).[33]

TABLE 6—ALABAMA DRR SO_2 SOURCES WITHOUT VALID DRR MODELING NEAR NEIGHBORING STATES

Alabama source	2017 Annual SO_2 emissions (tons)	Approximate distance to Alabama (km)	Closest neighboring state	Approximate distance to nearest neighboring state SO_2 source (km)	Nearest neighboring state SO_2 source & 2017 Emissions (≤100 Tons SO_2)
Ascend	1,628	40	Tennessee	123	Packaging Corp. of America (616 tons).
Lowman	1,110	51	Mississippi	73	Petro-Cypress Creek (128 tons).
Plant Barry	4,218	40	Mississippi	74	Plant Daniel (204 tons).
AkzoNobel	2,201	39	Mississippi	71	Plant Daniel (204 tons).

TABLE 7—ALABAMA DRR SO_2 SOURCES EMITTING GREATER THAN 100 tpy NEAR NEIGHBORING STATES—EMISSIONS TRENDS

Alabama source	2012	2013	2014	2015	2016	2017	2018
AkzoNobel	3,293	2,752	2,320	3,587	3,646	2,201	N/A *
Ascend	2,182	2,595	2,839	2,594	2,179	1,628	N/A *
Lowman	3,619	3,893	4,546	2,506	1,241	1,110	808
Plant Barry	10,731	13,448	10,690	8,688	5,421	4,218	5,257

* 2018 emissions not yet available for AkzoNobel and Ascend from EPA's Emissions Inventory System (EIS).

Table 6 shows that the distances between the four Alabama DRR sources without valid DRR modeling and the nearest state's source emitting over 100 tpy of SO_2 exceed 50 km. EPA believes that the distances greater than 50 km between sources make it unlikely that SO_2 emissions from the four Alabama DRR sources could interact with SO_2 emissions from the neighboring states' nearest sources in Table 6 in such a way as to contribute significantly to nonattainment in Mississippi and Tennessee. Table 7 shows that 2017 SO_2 emissions have declined below 2012 levels for Ascend and Akzo Nobel) and that 2018 SO_2 emissions have declined below 2012 levels for Lowman and Plant Barry.

EPA also considered whether any changes in controls or operations had occurred at AkzoNobel, Ascend, Lowman, and Plant Barry. AkzoNobel entered into a consent decree with EPA that has reduced SO_2 emissions.[34] According to June 6, 2019, and December 2, 2019, emails from ADEM to EPA, Ascend ceased operating Boiler 5, Boiler 6 is set to cease operations in 2020, and Cokers 1 and 2 are set to cease operations in 2021.[35] At Loman, three coal-fired boilers are set to be shut down in 2020. Plant Barry has retired Unit 3, and Units 1 and 2 are restricted to burn only natural gas as of January 1, 2017.

EPA also evaluated data in EPA's Air Quality System (AQS)[36] from the SO_2 monitors in the surrounding areas of AkzoNobel, Ascend, Lowman, and Plant Barry. The only monitor within 50 km of these sources is located in Mobile County, Alabama (AQS ID: 01–097–0003) and is approximately 23 km from AkzoNobel. The 2018 DV for this monitor is 11 ppb.

Based on the declining SO_2 emissions trends in Alabama shown in Table 4, and the Agency's analysis of the Alabama sources and respective data in Tables 5, 6, and 7, EPA believes that Alabama's potential for contributing significantly to nonattainment in a nearby state is reduced substantially.

3. SO_2 Ambient Air Quality

a. State Submission

In its August 20, 2018, SIP submission, ADEM indicated that there is one SO_2 monitor located in the State with complete data.[37] This monitor (AQS ID: 01–073–1003) is located in Jefferson County, Alabama, and has a 2015–2017 DV of 13 ppb. The monitor is well over 50 km from the State's border. ADEM also asserts that there are no monitors located in Florida, Georgia, Louisiana, Mississippi, or Tennessee that are violating the 2010 1-hour SO_2 NAAQS for the 2015–2017 monitoring period based on the DVs in EPA's AQS for these monitors.

b. EPA Analysis

EPA reviewed monitoring data for AQS monitors in Alabama within 50 km

[32] Table 6 SO_2 emissions are from EPA's Air Markets Program Data (AMPD) accessible at: *https://ampd.epa.gov/ampd/*. EPA's AMPD is an application that provides both current and historical data collected as part of EPA's emissions trading programs.

[33] Table 7 SO_2 emissions for Lowman and Plant Barry are from EPA's AMPD.

[34] The consent decree, entered on November 21, 2019, is available at: *https://www.justice.gov/enrd/consent-decree/file/1201231/download*. A press release is available at: *https://www.epa.gov/newsreleases/settlement-reached-nouryon-functional-chemicals-llc-fka-akzo-nobel-functional-chemicals*.

[35] ADEM's June 6, 2019, and December 2, 2019, emails are included in the docket for this action at *www.regulations.gov* at Docket ID No. EPA–R04–OAR–2018–0792.

[36] EPA's AQS contains ambient air pollution data collected by EPA, state, local, and tribal air pollution control agencies. This data is available at *https://www.epa.gov/air-trends/air-quality-design-values*.

[37] At the time of SIP submission, the Jefferson County, Alabama, monitor (AQS ID: 01–073–1003) was the only monitor with a valid DV for the 2015–2017 time period.

of another state and for AQS monitors within 50 km of Alabama in adjacent states using relevant data from EPA's AQS DV reports. The 2010 1-hour SO_2 standard is violated at an ambient air quality monitoring site (or in the case of dispersion modeling, at an ambient air quality receptor location) when the 3-year average of the annual 99th percentile of the daily maximum 1-hour average concentrations exceeds 75 ppb, as determined in accordance with Appendix T of 40 CFR part 50. The only AQS monitors in Alabama within 50 km of another state are the Mobile County monitor (AQS ID: 01–097–0003), and the Sumter County monitor (AQS ID: 01–119–0003). The Mobile County monitor is approximately 30 km from Mississippi and 45 km from Florida, and the Sumter County monitor is approximately 13 km from Mississippi. The Mobile County monitor began operation on January 1, 2016. The monitor has a complete, quality-assured 2016–2018 DV of 11 ppb, which is 85 percent below the level of the 2010 1-hour SO_2 NAAQS. The Sumter County monitor began operation on January 1, 2018. Since the monitor has not operated for three years, it has not yet collected a valid DV. During 2018, the Sumter County monitor recorded a 99th percentile daily maximum 1-hour SO_2 concentration of approximately 4 ppb. Neither the Mobile County nor Sumter County monitor has measured any daily exceedances of the 2010 1-hour SO_2 NAAQS during their respective years of operation.

Table 8 shows that there are three AQS monitors in the adjacent states of Florida (Escambia County monitor), Georgia (Floyd County monitor), and Mississippi (Jackson County monitor) which are located within 50 km of the Alabama border. Currently, there are no AQS monitors with complete, valid data indicating a violation of the 2010 1-hour SO_2 NAAQS located within 50 km of Alabama in the states of Florida, Georgia, and Mississippi. Further, the DVs from these monitors show a general downward trend in SO_2 concentrations and that the DVs from 2012–2018 have remained below the standard, with the exception of the Floyd County monitor in Georgia which did not have a valid DV for 2015–2017 and 2016–2018.[38]

TABLE 8—2010 1-HOUR SO_2 DVS (ppb) FOR AQS MONITORS LOCATED IN ADJACENT STATES WITHIN 50 km OF ALABAMA

State	County	AQS ID	2010–2012	2011–2013	2012–2014	2013–2015	2014–2016	2015–2017	2016–2018	Approximate distance to state border (km)
Florida	Escambia	12–033–0004	27	22	25	24	16	8	6	23
Georgia	Floyd	13–115–0003	74	67	46	35	42	*ND	*ND	12
Mississippi	Jackson	28–059–0006	27	23	27	28	21	12	6	13

*ND indicates no data due to relocation of the Floyd County, Georgia monitor to serve as a DRR monitor (AQS ID: 13–115–0006) listed in Table 8.

EPA notes that the 2014–2016 DV for the Floyd County, Georgia AQS monitor (AQS ID: 13–115–0003) of 42 ppb is 44 percent below the level of the 2010 1-hour SO_2 NAAQS. None of the monitors listed in Table 8 has measured any daily exceedances of the 2010 1-hour SO_2 NAAQS during 2017 or 2018. Thus, based on this assessment, EPA believes that these data support EPA's proposed conclusion that Alabama will not contribute significantly to nonattainment of the 2010 1-hour SO_2 NAAQS in any other state.

EPA also evaluated monitoring data provided to date for AQS monitors located in states adjacent to Alabama within 50 km of the State's border that were established to characterize the air quality around specific sources subject to EPA's DRR to inform the Agency's future round 4 designations for the 2010 1-hour SO_2 NAAQS in lieu of modeling (hereinafter referred to as ''DRR monitors''). There is only one DRR monitor—located in Floyd County, Georgia (AQS ID: 13–115–0006)—that is within 50 km of the Alabama border. Although this monitor does not have three or more years of complete data to establish DVs, EPA evaluated the available, annual 99th percentile SO_2 concentration data for 2017 and 2018 (see Table 9). The Floyd County DRR monitor was sited in the vicinity of the International Paper—Rome facility, a DRR source.

TABLE 9—ANNUAL 99TH PERCENTILE OF 1-HOUR DAILY MAXIMUM SO_2 CONCENTRATIONS (ppb) FOR ROUND 4 DRR MONITORS LOCATED IN ADJACENT STATES WITHIN 50 km OF ALABAMA

County (state)	Round 4 monitored source	AQS ID	2017 99th percentile concentration	2018 99th percentile concentration	Approximate distance to Alabama (km)
Floyd (GA)	International Paper—Rome	13–115–0006	22	15	12

Though the annual 99th percentile daily maximum 1-hour SO_2 concentrations shown in Table 9 are not directly comparable to a DV for the 2010 1-hour SO_2 NAAQS, which is in the form of the 3-year average of the 99th percentile of daily maximum 1-hour values, EPA notes that the highest annual 99th percentile daily maximum 1-hour values observed at the Floyd County DRR monitor in 2017 and 2018 were 22 ppb and 15 ppb, respectively. The Floyd County DRR monitor has not measured any daily exceedances of the 2010 1-hour SO_2 NAAQS during 2017 or 2018. After careful review of the State's assessment and all available monitoring data, EPA believes that the AQS monitoring data assessed support EPA's proposed conclusion that Alabama will not contribute significantly to 2010 1-hour SO_2 violations in the neighboring states.

[38] The Floyd County, Georgia monitor (AQS ID: 13–115–0003) was relocated in January 2017 to the opposite side of the International Paper-Rome facility to characterize the area of expected maximum 1-hour SO_2 concentration near the source under the DRR. The relocated monitor (AQS ID: 13–115–0006) is shown in Table 9 of this notice and does not have a valid 2016–2018 DV due to the relocation.

4. SIP-Approved Regulations Addressing SO_2 Emissions

a. State Submission

Alabama's August 20, 2018, SIP submission identifies SIP-approved measures which help ensure that SO_2 emissions in the State will not contribute significantly to nonattainment of the 2010 1-hour SO_2 NAAQS in any other state. Specifically, ADEM lists the following SIP-approved Alabama regulations which establish emission limits and other control measures for SO_2: ADEM Administrative Code Chapter 335–3–5—*Control of Sulfur Compound Emissions* and Rules 335–3–14–.01—*General Provisions;* 335–3–14–.02—*Permit Procedure;* 335–3–14–.03—*Standards for Granting Permits;* 335–3–14–.04—*Air Permits Authorizing Construction in Clean Air Areas (Prevention of Significant Deterioration (PSD));* and 335–3–14–.05—*Air Permits Authorizing Construction in or Near Nonattainment Areas.*

b. EPA Analysis

EPA believes that Alabama's SIP-approved measures summarized in III.C.4.a. of this notice, which establish emissions limits, permitting requirements, and other control measures for SO_2, effectively address emissions of SO_2 from sources in the State. For the purposes of ensuring that SO_2 emissions at new major sources or major modifications at existing major sources in Alabama do not contribute significantly to nonattainment or interfere with maintenance of the 2010 1-hour SO_2 NAAQS, the State has a SIP-approved major source new source review (NSR) program. Alabama's SIP-approved nonattainment NSR regulation, Rule 335–3–14–.05, applies to the construction of any new major stationary source or major modification at an existing major stationary source in an area designated as nonattainment. Alabama's SIP-approved prevention of significant deterioration (PSD) regulation, Rule 335–3–14–.04, applies to the construction of any new major stationary source or any major modification at an existing major stationary source in an area designated as attainment or unclassifiable or not yet designated. Rules 335–3–14–.01—*General Provisions,* 335–3–14–.02—*Permit Procedure,* and 335–3–14–.03—*Standards for Granting Permits* govern the preconstruction permitting of modifications to and construction of minor stationary sources. These major and minor NSR rules ensure that SO_2 emissions due to major modifications at existing major stationary sources, modifications at minor stationary sources, and the construction of new major and minor sources in Alabama will not contribute significantly to nonattainment of the 2010 1-hour SO_2 NAAQS in neighboring states.

5. Federal Regulations Addressing SO_2 Emissions in Alabama

a. State Submission

ADEM identified EPA programs which, either directly or indirectly, have significantly reduced SO_2 emissions in Alabama. These programs include: 2007 Heavy-Duty Highway Rule; Acid Rain Program; Cross-State Air Pollution Rule; National Emission Standards for Hazardous Air Pollutants; New Source Performance Standards; Nonroad Diesel Rule; and Tier 1 and 2 Mobile Source Rules.

b. EPA Analysis

In addition to the list of federal regulations identified in section III.C.5.a. of this notice which contribute to SO_2 reductions in Alabama, EPA notes that some facilities in the State are also subject to the federal requirements contained in EPA's Mercury Air Toxic Standards (MATS). These regulations reduce acid gases, which also result in reductions of SO_2 emissions. EPA believes that the federal control measures for SO_2 which Alabama lists in the State's SIP submission, along with MATS, may lower SO_2 emissions, which, in turn, are expected to continue to support EPA's proposed conclusion that SO_2 emissions from Alabama will not contribute significantly to nonattainment of the 2010 1-hour SO_2 NAAQS in another state.

6. Conclusion

EPA proposes to determine that Alabama's August 20, 2018, SIP submission satisfies the requirements of prong 1 of CAA section 110(a)(2)(D)(i)(I). This proposed determination is based on the following considerations: Current air quality data for AQS SO_2 monitors located in the states of Florida, Georgia, and Mississippi that are within 50 km of Alabama's border are well below the 2010 1-hour SO_2 NAAQS; modeling for the two Alabama DRR sources whose modeling grids extend into a portion of other states indicate that the maximum impacts did not exceed the level of the 2010 1-hour SO_2 NAAQS in neighboring states; modeling for four DRR sources in the surrounding states of Florida, Georgia, and Mississippi located within 50 km of Alabama indicate that the areas around these sources do not violate the 2010 1-hour SO_2 NAAQS; declining statewide and EGU SO_2 emissions from 2005 to 2014 in Alabama suggest that the State's potential for contributing significantly to nonattainment of the 2010 1-hour SO_2 NAAQS is reduced substantially; SO_2 emissions from Alabama sources not subject to the DRR and which emitted over 100 tons of SO_2 in 2017 are not likely interacting with SO_2 emissions from the nearest sources in bordering states in such a way as to contribute significantly to nonattainment in the surrounding states of Florida, Georgia, Mississippi, and Tennessee; Alabama DRR sources without valid DRR modeling are located over 50 km from the nearest state's SO_2 source and their SO_2 emissions show an overall general downward trend; and the implementation of current Alabama SIP-approved measures and federal emissions control programs help to further reduce and control SO_2 emissions from sources within Alabama. Further, EPA has no information indicating that Alabama sources will contribute significantly to nonattainment of the 2010 1-hour SO_2 NAAQS in another state.

Based on the analysis provided by Alabama in its SIP submission and EPA's analysis of the factors described in section III.C, EPA proposes to find that sources within Alabama will not contribute significantly to nonattainment of the 2010 1-hour SO_2 NAAQS in any other state.

D. EPA's Prong 2 Evaluation—Interference With Maintenance of the NAAQS

Prong 2 of the good neighbor provision requires state plans to prohibit emissions that will interfere with maintenance of a NAAQS in another state.

1. State Submission

In its August 20, 2018, SIP submission, ADEM relied upon the information provided for prong 1 to demonstrate that emissions within Alabama will not interfere with maintenance of the 2010 1-hour SO_2 NAAQS in any neighboring state. Further, ADEM notes that there are no monitors located in the surrounding states of Florida, Georgia, Louisiana, Mississippi, and Tennessee that are violating the 2010 1-hour SO_2 NAAQS for the 2015–2017 monitoring period. ADEM also highlighted the State's PSD regulation (335–3–14–.04) and states that this regulation ''will continue to apply to any future, large sources in Alabama, further ensuring that maintenance efforts in neighboring states are addressed.''

2. EPA Analysis

In *North Carolina* v. *EPA,* the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) explained that the regulating authority must give prong 2 ''independent significance'' from prong 1 by evaluating the impact of upwind state emissions on downwind areas that, while currently in attainment, are at risk of future nonattainment. *North Carolina* v. *EPA,* 531 F.3d 896, 910–11 (D.C. Cir. 2008). EPA interprets prong 2 to require an evaluation of the potential impact of a state's emissions on areas that are currently measuring clean data, but that may have issues maintaining that air quality. Therefore, in addition to the analysis presented by Alabama, EPA has also reviewed additional information on SO_2 air quality and emission trends to evaluate the State's conclusion that Alabama will not interfere with maintenance of the 2010 1-hour SO_2 NAAQS in downwind states. This evaluation builds on the analysis regarding significant contribution to nonattainment (prong 1).

For the prong 2 analysis, EPA evaluated the data discussed in section III.C. of this notice for prong 1, with a specific focus on evaluating emissions trends in Alabama, analyzing air quality data, and assessing how future sources of SO_2 are addressed through existing SIP-approved and federal regulations. Given the continuing trend of decreasing statewide SO_2 emissions from sources within Alabama, and the fact that all areas in other states within 50 km of the Alabama border have DVs attaining the 2010 1-hour SO_2 NAAQS, EPA believes that evaluating whether these decreases in emissions can be maintained over time is a reasonable criterion to ensure that sources within Alabama do not interfere with its neighboring states' ability to maintain the 2010 1-hour SO_2 NAAQS.

With respect to air quality data trends, the valid 2016–2018 DVs for AQS SO_2 monitors both in Alabama within 50 km of another state's border and in adjacent states within 50 km of Alabama's border are below the 2010 1-hour SO_2 NAAQS.[39] Further, modeling results for DRR sources in the State within 50 km of Alabama's border did not exceed the level of the 2010 1-hour SO_2 NAAQS in neighboring states and modeling results for DRR sources in neighboring states within 50 km of Alabama's border show maximum impacts did not exceed the level of the 2010 1-hour SO_2 NAAQS. Thus, these modeling results demonstrate that Alabama's largest point sources of SO_2 are not expected to interfere with maintenance of the 2010 1-hour SO_2 NAAQS in another state.

As discussed in sections III.C.4 and III.C.5, EPA believes that federal and SIP-approved State regulations that both directly and indirectly reduce emissions of SO_2 in Alabama help ensure that the State does not interfere with maintenance of the NAAQS in another state. SO_2 emissions from future major modifications and new major sources will be addressed by Alabama's SIP-approved major NSR regulations described in section III.C.4. In addition, ADEM Rules 335–3–14–.01—*General Provisions,* 335–3–14–.02—*Permit Procedure,* and 335–3–14–.03—*Standards for Granting Permits* govern the preconstruction permitting of modifications to and construction of minor stationary sources. These major and minor source permitting regulations are designed to ensure that emissions from these activities will not interfere with maintenance of the 2010 1-hour SO_2 NAAQS in the State or in any other state.

3. Conclusion

EPA proposes to determine that Alabama's August 20, 2018, SIP submission satisfies the requirements of prong 2 of CAA section 110(a)(2)(D)(i)(I). This determination is based on the following considerations: Statewide and EGU SO_2 emissions from 2005 to 2014 in Alabama have declined significantly (66 and 74 percent, respectively); current Alabama SIP-approved measures and federal emissions control programs adequately control SO_2 emissions from sources within Alabama; Alabama's SIP-approved PSD and minor source NSR permit programs will address future large and small SO_2 sources; current air quality data for AQS SO_2 monitors in Florida, Georgia, and Mississippi within 50 km of Alabama's border have DVs well below the 2010 1-hour SO_2 NAAQS; and modeling for DRR sources in Alabama indicate that the maximum impacts did not exceed the level of the 2010 1-hour SO_2 NAAQS in neighboring states; modeling for DRR sources within 50 km of Alabama's border located in the states of Florida, Georgia, and Mississippi demonstrate that Alabama's largest point sources of SO_2 will not interfere with maintenance of the 2010 1-hour SO_2 NAAQS in another state. Based on the analysis provided by Alabama in its SIP submission and EPA's analysis of the factors described in section III.C of this notice, EPA proposes to find that emission sources within Alabama will not interfere with maintenance of the 2010 1-hour SO_2 NAAQS in any other state.

IV. Proposed Action

In light of the above analysis, EPA is proposing to approve Alabama's August 20, 2018, SIP submission as demonstrating that emissions from Alabama will not contribute significantly to nonattainment or interfere with maintenance of the 2010 1-hour SO_2 NAAQS in another state.

V. Statutory and Executive Order Reviews

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

[39] As noted in Section III.C.3.b, the Floyd County, Georgia monitor (AQS ID: 13–115–0003) does not have a valid 2016–2018 DV as this monitor was relocated in January 2017 to the opposite side of the International Paper-Rome facility to characterize the area of expected maximum 1-hour SO_2 concentration near the source under the DRR.

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).

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 proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: December 17, 2019.

Blake M. Ashbee,

Acting Regional Administrator, Region 4.

[FR Doc. 2019–28236 Filed 12–30–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2018–0705; FRL–10003–47–Region 6]

Air Plan Approval; New Mexico; Interstate Transport Requirements for the 2008 Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA) is extending the comment period for the proposed rule titled ''Air Plan Approval; New Mexico; Interstate Transport Requirements for the 2008 Ozone NAAQS'' that was published in the **Federal Register** on December 3, 2019. The proposal provided for a public comment period ending January 2, 2020. The EPA received a request from the public to extend this comment period. The EPA is extending the comment period to a 45-day public comment period ending January 17, 2020.

DATES: The comment period for the proposed rule published December 3, 2019 (84 FR 66098), is extended. Written comments must be received on or before January 17, 2020.

ADDRESSES: Submit your comments, identified by Docket Number EPA–R06–OAR–2018–0705, at *http://www.regulations.gov* or via email to *fuerst.sherry@epa.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact Sherry Fuerst, 214–665–6454, *fuerst.sherry@epa.gov.* For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at the EPA Region 6 Office, 1201 Elm Street, Suite 500, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available at either location (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Sherry Fuerst, 214–665–6454, *fuerst.sherry@epa.gov.* To inspect the hard copy materials, please schedule an appointment with Ms. Fuerst or Mr. Bill Deese at 214–665–7253.

SUPPLEMENTARY INFORMATION: On December 3, 2019, we published in the **Federal Register** ''Air Plan Approval; New Mexico; Interstate Transport Requirements for the 2008 Ozone NAAQS'' addressing ozone interstate transport (84 FR 66098). We received a request for an extension of the comment period and, in response, have decided to allow an additional 15 days. We are extending the comment period to January 17, 2020. This action will allow interested persons additional time to prepare and submit comments.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen Oxides, Ozone.

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

Dated: December 18, 2019.

David Garcia,

Air and Radiation Division Director, Region 6.

[FR Doc. 2019–27865 Filed 12–30–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1001

Solicitation of New Safe Harbors and Special Fraud Alerts

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notification of intent to develop regulations.

SUMMARY: In accordance with section 205 of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), this annual notification solicits proposals and recommendations for developing new, or modifying existing, safe harbor provisions under section 1128B(b) of the Social Security Act (the Act), (the anti-kickback statute), as well as developing new OIG Special Fraud Alerts.

DATES: To ensure consideration, public comments must be delivered to the address provided below by no later than 5 p.m. on March 2, 2020.

ADDRESSES: In commenting, please refer to file code OIG–128–N. Because of staff and resource limitations, we cannot accept comments by facsimile (fax) transmission. You may submit comments in one of three ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific recommendations and proposals through the Federal eRulemaking Portal at *http://www.regulations.gov.*

2. *By regular, express, or overnight mail.* You may send written comments to the following address: Office of Inspector General, Regulatory Affairs, Department of Health and Human Services, Attention: OIG–128–N, Room 5527, Cohen Building, 330 Independence Avenue SW, Washington, DC 20201. Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By hand or courier.* If you prefer, you may deliver your written comments by hand or courier before the close of the comment period to the following address: Office of Inspector General, Department of Health and Human Services, Cohen Building, Room 5527, 330 Independence Avenue SW, Washington, DC 20201. Because access to the interior of the Cohen Building is not readily available to persons without Federal Government identification, commenters are encouraged to schedule their delivery with one of our staff members at (202) 619–0335. For information on the inspection of public comments, please see the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Samantha Flanzer, Office of Inspector General, (202) 619–0335.

SUPPLEMENTARY INFORMATION:

Submitting Comments: We welcome comments from the public on recommendations for developing new or revised safe harbors and Special Fraud Alerts. Please assist us by referencing the file code OIG–128–N.

Inspection of Public Comments: All comments received before the end of the comment period will be posted on *http://www.regulations.gov* for public viewing.

I. Background

A. OIG Safe Harbor Provisions

Section 1128B(b) of the Act, (42 U.S.C. 1320a–7b(b), the anti-kickback statute), provides for criminal penalties for whoever knowingly and willfully offers, pays, solicits, or receives remuneration to induce or reward the referral of business reimbursable under any of the Federal health care programs, as defined in section 1128B(f) of the Act (42 U.S.C. 1320a–7b(f)). The offense is classified as a felony and is punishable by fines of up to $100,000 and imprisonment for up to 10 years. Violations of the anti-kickback statute also may result in the imposition of civil monetary penalties (CMP) under section 1128A(a)(7) of the Act (42 U.S.C. 1320a–7a(a)(7)), program exclusion under section 1128(b)(7) of the Act (42 U.S.C. 1320a–7(b)(7)), and liability under the False Claims Act (31 U.S.C. 3729–33).

Because of the broad reach of the statute, concern was expressed that some relatively innocuous business arrangements were covered by the statute and, therefore, potentially subject to criminal prosecution. In response, Congress enacted section 14 of the Medicare and Medicaid Patient and Program Protection Act of 1987, Public Law 100–93 (section 1128B(b)(3)(E) of the Act; 42 U.S.C. 1320a–7b(b)(3)(E)), which specifically requires the development and promulgation of regulations, the so-called safe harbor provisions, that would specify various payment and business practices that would not be subject to sanctions under the anti-kickback statute, even though they potentially may be capable of inducing referrals of business for which payment may be made under a Federal health care program. Since July 29, 1991, there have been a series of final regulations published in the **Federal Register** establishing safe harbors protecting various payment and business practices.[1] These safe harbor provisions have been developed ''to limit the reach of the statute somewhat by permitting certain non-abusive arrangements, while encouraging beneficial and innocuous arrangements.'' [2] Health care providers and others may voluntarily seek to comply with the conditions of an applicable safe harbor so that they have the assurance that their payment or business practice will not be subject to sanctions under the anti-kickback statute. The safe harbor regulations promulgated by OIG are found at 42 CFR part 1001.

B. OIG Special Fraud Alerts

OIG periodically issues Special Fraud Alerts to give continuing guidance to health care providers and other entities regarding practices OIG considers to be suspect or of particular concern.[3] The Special Fraud Alerts encourage industry compliance by giving providers guidance that can be applied to their own practices. OIG Special Fraud Alerts are published in the **Federal Register** and on OIG's website and are intended for extensive distribution.

In developing Special Fraud Alerts, OIG relies on a number of sources and consults directly with experts in the subject field, including those within OIG, other agencies of the U.S. Department of Health and Human Services (the Department), other Federal and State agencies, and those in the health care industry.

C. Section 205 of the Health Insurance Portability and Accountability Act of 1996

Section 205 of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104–191, and section 1128D of the Act (42 U.S.C. 1320a–7d), requires the Department to develop and publish an annual notification in the **Federal Register** formally soliciting proposals for developing or modifying existing safe harbors to the anti-kickback statute and Special Fraud Alerts.

In developing safe harbors for the anti-kickback statute, OIG, in consultation with the U.S. Department of Justice, thoroughly reviews the range of factual circumstances that may fall within the proposed safe harbor subject area. In doing so, OIG seeks to identify and develop regulatory limitations and controls in order to permit beneficial and innocuous arrangements while, at the same time, protecting Federal health care programs and their beneficiaries from the harms caused by fraud and abuse.

II. Solicitation of Additional New Recommendations and Proposals

OIG seeks recommendations regarding the development of new or modified safe harbor regulations and new Special Fraud Alerts. A detailed explanation of justifications for, or empirical data supporting, a suggestion for a new or modified safe harbor or Special Fraud Alert would be helpful and should, if possible, be included in any response to this solicitation.

While OIG welcomes all relevant comments, this solicitation is separate and distinct from both OIG's ''Request for Information Regarding the Anti-Kickback Statute and Beneficiary Inducements CMP,'' published on August 27, 2018 (RFI),[4] and its notice of proposed rulemaking (NPRM) entitled ''Revisions To Safe Harbors Under the Anti-Kickback Statute, and Civil Monetary Penalty Rules Regarding Beneficiary Inducements,'' published on October 17, 2019.[5] Commenters need not duplicate comments previously submitted in response to OIG's RFI or NPRM.

A. Criteria for Modifying and Establishing Safe Harbor Provisions

In accordance with section 205 of HIPAA, we will consider a number of factors in reviewing proposals for new or modified safe harbor provisions, such as the extent to which the proposals would affect an increase or decrease in:

[1] *See e.g.,* Medicare and State Health Care Programs: Fraud and Abuse; Revisions to the Safe Harbors Under the Anti-Kickback Statute and Civil Monetary Penalty Rules Regarding Beneficiary Inducements, 81 FR 88368 (Dec. 7, 2016).

[2] Medicare and State Health Care Programs: Fraud and Abuse; OIG Anti-Kickback Provisions, 56 FR 35952, 35958 (July 29, 1991).

[3] *See e.g.,* Special Fraud Alert: Physician-Owned Entities, 79 FR 19271 (Mar. 29, 2013).

[4] Medicare and State Health Care Programs: Fraud and Abuse; Request for Information Regarding the Anti-Kickback Statute and Beneficiary Inducements CMP, 83 FR 43607 (Aug. 27, 2018).

[5] Medicare and State Healthcare Programs: Fraud and Abuse; Revisions To Safe Harbors Under the Anti-Kickback Statute, and Civil Monetary Penalty Rules Regarding Beneficiary Inducements, 84 FR 55694 (Oct. 17, 2019).

- Access to health care services;
- The quality of health care services;
- Patient freedom of choice among health care providers;
- Competition among health care providers;
- The cost to Federal health care programs;
- The potential overutilization of health care services; and
- The ability of health care facilities to provide services in medically underserved areas or to medically underserved populations.

In addition, we will consider other factors, including, for example, the existence (or nonexistence) of any potential financial benefit to health care professionals or providers that may influence their decision whether to (1) order a health care item or service or (2) arrange for a referral of health care items or services to a particular practitioner or provider.

B. Criteria for Developing Special Fraud Alerts

In determining whether to issue additional Special Fraud Alerts, we will consider whether, and to what extent, the practices that would be identified in a new Special Fraud Alert may result in any of the consequences set forth above, as well as the volume and frequency of the conduct that would be identified in the Special Fraud Alert.

Dated: December 10, 2019.

Joanne M. Chiedi,

Acting Inspector General.

[FR Doc. 2019–27202 Filed 12–30–19; 8:45 am]

BILLING CODE 4152–01–P

Notices

Federal Register

Vol. 84, No. 250

Tuesday, December 31, 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 COMMERCE

Foreign-Trade Zones Board

[Order No. 2088]

Grant of Authority; Establishment of a Foreign-Trade Zone Under the Alternative Site Framework; Lufkin, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Act provides for '' . . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board adopted the alternative site framework (ASF) (15 CFR Sec. 400.2(c)) as an option for the establishment or reorganization of zones;

Whereas, the City of Lufkin (the Grantee) has made application to the Board (B–56–2018, docketed September 5, 2018) requesting the establishment of a foreign-trade zone under the ASF with a service area of the City of Lufkin and a portion of its Extra Territorial Jurisdiction, adjacent to the Port Arthur-Beaumont port of entry;

Whereas, notice inviting public comment has been given in the **Federal Register** (83 FR 45879–45880, September 11, 2018) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 297, as described in the application, and subject to the FTZ Act and the Board's regulations, including Section 400.13, and to the Board's standard 2,000-acre activation limit.

Dated: December 17, 2019.

Wilbur L. Ross, Jr.,

Secretary of Commerce, Chairman and Executive Officer, Foreign-Trade Zones Board.

[FR Doc. 2019–28208 Filed 12–30–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–191–2019]

Approval of Subzone Status; United Furniture Industries, Inc.; Nettleton and Amory (Monroe County), Mississippi

On September 23, 2019, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the Greater Mississippi Foreign-Trade Zone, Inc., grantee of FTZ 158, requesting subzone status subject to the existing activation limit of FTZ 158, on behalf of United Furniture Industries, Inc., in Nettleton and Amory, Mississippi.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (84 FR 51109, September 27, 2019). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval.

Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR Sec. 400.36(f)), the application to establish Subzone 158H was approved on December 26, 2019, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 158's 2,000-acre activation limit.

Dated: December 26, 2019.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2019–28264 Filed 12–30–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–220–2019]

Approval of Subzone Status; The Lobster Trap Co.; Bourne, Massachusetts

On October 29, 2019, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the City of New Bedford, grantee of FTZ 28, requesting subzone status subject to the existing activation limit of FTZ 28, on behalf of The Lobster Trap Co., in Bourne, Massachusetts.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (84 FR 59351, November 4, 2019). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval. Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR 400.36(f)), the application to establish Subzone 28H was approved on December 23, 2019, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 28's 22.5-acre activation limit.

Dated: December 23, 2019.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2019–28226 Filed 12–30–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Technical Advisory Committees; Notice of Recruitment of Members

The Bureau of Industry and Security (BIS), Department of Commerce is announcing its recruitment of candidates to serve on one of its seven Technical Advisory Committees (''TACs'' or ''Committees''). TAC members advise the Department of

Commerce on the technical parameters for export controls applicable to dual-use items (commodities, software, and technology) and on the administration of those controls. The TACs are composed of representatives from industry, academia, and the U.S. Government and reflect diverse points of view on the concerns of the exporting community. Industry representatives are selected from firms producing a broad range of items currently controlled for national security, non-proliferation, foreign policy, and short supply reasons or that are proposed for such controls. Representation from the private sector is balanced to the extent possible among large and small firms.

Six TACs are responsible for advising the Department of Commerce on the technical parameters for export controls and the administration of those controls within specified areas: Information Systems TAC: Control List Categories 3 (electronics), 4 (computers), and 5 (telecommunications and information security); Materials and Equipment TAC: Control List Categories 0 (nuclear and miscellaneous), 1 (materials, chemicals, microorganisms, and toxins) and 2 (materials processing); Sensors and Instrumentation TAC: Control List Category 6 (sensors and lasers); Transportation and Related Equipment TAC: Control List Categories 7 (navigation and avionics), 8 (marine), and 9 (propulsion systems, space vehicles, and related equipment); and the Emerging Technology TAC (identification of emerging and foundational technologies that may be developed over a period of five to ten years with potential dual-use applications). The seventh TAC, the Regulations and Procedures TAC, focuses on the Export Administration Regulations (EAR) and procedures for implementing the EAR.

TAC members are appointed by the Secretary of Commerce and serve terms of not more than four consecutive years. TAC members must obtain secret-level clearances prior to their appointment. These clearances are necessary so that members may be permitted access to classified information that may be needed to formulate recommendations to the Department of Commerce. Applicants are strongly encouraged to review materials and information on each Committee website, including the Committee's charter, to gain an understanding of each Committee's responsibilities, matters on which the Committee will provide recommendations, and expectations for members. Members of any of the seven TACs may not be registered as foreign agents under the Foreign Agents Registration Act. No TAC member may represent a company that is majority owned or controlled by a foreign government entity (or foreign government entities). TAC members will not be compensated for their services or reimbursed for their travel expenses.

If you are interested in becoming a TAC member, please provide the following information: 1. Name of applicant; 2. affirmation of U.S. citizenship; 3. organizational affiliation and title, as appropriate; 4. mailing address; 5. work telephone number; 6. email address; 7. summary of qualifications for membership; 8. An affirmative statement that the candidate will be able to meet the expected commitments of Committee work. Committee work includes: (a) Attending in-person/teleconference Committee meetings roughly four times per year (lasting 1–2 days each); (b) undertaking additional work outside of full Committee meetings including subcommittee conference calls or meetings as needed, and (c) frequently drafting, preparing or commenting on proposed recommendations to be evaluated at Committee meetings. Finally, candidates must provide an affirmative statement that they meet all Committee eligibility requirements.

The Department of Commerce is committed to equal opportunity in the workplace and seeks diverse Advisory Committee membership.

To respond to this recruitment notice, please send a copy of your resume to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov.*

Deadline: This Notice of Recruitment will be open for one year from its date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Yvette Springer on (202) 482–2813.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2019–27629 Filed 12–30–19; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–882]

Refined Brown Aluminum Oxide From the People's Republic of China: Final Results of the Expedited Third Five-Year Sunset Review of the Antidumping Duty Order

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

SUMMARY: As a result of this sunset review, the Department of Commerce (Commerce) finds that revocation of the antidumping duty order on refined brown aluminum oxide (RBAO) from the People's Republic of China (China) would be likely to lead to continuation or recurrence of dumping at the levels indicated in the ''Final Results of Review'' section of this notice.

DATES: Applicable December 31, 2019.

FOR FURTHER INFORMATION CONTACT: Ian Hamilton, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4798.

SUPPLEMENTARY INFORMATION:

Background

On November 19, 2003, Commerce published its antidumping duty order on RBAO from China in the **Federal Register**.[1] On September 10, 2019, Commerce published the notice of initiation of the third sunset review of the antidumping duty order on RBAO from China,[2] pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[3] Commerce received notices of intent to participate from Imerys Fused Minerals Niagara Falls, Inc. (Imerys), U.S. Electrofused Minerals, Inc. (Electrofused), Washington Mills Group, Inc (Washington Mills), and Great Lakes Minerals, LLC (Great Lakes) (collectively, domestic interested parties), within the deadline specified in 19 CFR 351.218(d)(1)(i).[4] Imerys, Electrofused, Washington Mills, and Great Lakes each claimed interested party status under section 771(9)(C) of the Act, as domestic producers of RABO.

Commerce received a substantive response from the domestic interested parties[5] within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no substantive response from any other domestic or interested parties

[1] *See Antidumping Duty Order: Refined Brown Aluminum Oxide (Otherwise Known as Refined Brown Artificial Corundum or Brown Fused Alumina) from the People's Republic of China,* 68 FR 65249 (November 19, 2003) (*Order*).

[2] *See Order.* We applied the weighted-average dumping margins of 135.18 percent to Zibo Jinyu Abrasive Co., Ltd. (Zibo Jinyu), and 135.18 percent as the China-wide rate. *Id.,* 68 FR at 65250.

[3] *See Initiation of Five-Year (Sunset) Review,* 84 FR 47485 (September 10, 2019).

[4] *See* Imerys, Electrofused, and Washington Mills' Letter, ''Refined Brown Aluminum Oxide from the People's Republic of China: Notice of Intent to Participate,'' dated September 16, 2019; and Great Lakes' Letter, ''Refined Brown Aluminum Oxide from the People's Republic of China: Notice of Intent to Participate,'' dated September 18, 2019.

[5] *See* Domestic Interested Parties' Letter, ''Refined Brown Aluminum Oxide from China, Third Sunset Review: Substantive Response to the Notice of Initiation,'' dated October 1, 2019.

in this proceeding, nor was a hearing requested.

On October 21, 2019, Commerce notified the U.S. International Trade Commission (ITC) that it did not receive an adequate substantive response from respondent interested parties.[6] As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of this antidumping duty order.

Scope of the Order

The merchandise covered by this order is ground, pulverized or refined brown artificial corundum, also known as brown aluminum oxide or brown fused alumina, in grit size of ⅜ inch or less. Excluded from the scope of the order is crude artificial corundum in which particles with a diameter greater than ⅜ inch constitute at least 50 percent of the total weight of the entire batch. The scope includes brown artificial corundum in which particles with a diameter greater than ⅜ inch constitute less than 50 percent of the total weight of the batch. The merchandise under investigation is currently classifiable under subheadings 2818.10.20.00 and 2818.10.20.90 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise covered by the order is dispositive. For a complete description of the scope of the *Order, see* the Issues and Decision Memorandum.[7]

Analysis of Comments Received

All issues raised in this sunset review are addressed in the Issues and Decision Memorandum. The issues discussed in the Issues and Decision Memorandum are the likelihood of continuation or recurrence of dumping, and the magnitude of the margins of dumping likely to prevail if this order were revoked. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and to all parties in the Central Records Unit, room B8024 of the main Commerce building. A list of topics discussed in the Issues and Decision Memorandum is included as an appendix to this notice. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Final Results of Review

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, we determine that revocation of the antidumping duty order on RBAO from China would be likely to lead to continuation or recurrence of dumping at weighted-average margins up to 135.18 percent.

Administrative Protective Order

This notice also serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing the final results and this notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act and 19 CFR 351.218.

Dated: December 19, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. History of the Order
V. Legal Framework
VI. Discussion of the Issues
  1. Likelihood of Continuation or Recurrence of Dumping
  2. Magnitude of the Dumping Margins Likely to Prevail
VII. Final Results of Sunset Review
VIII. Recommendation

[FR Doc. 2019–28234 Filed 12–30–19; 8:45 am]

BILLING CODE 3510–DS–P

[6] *See* Commerce's Letter, ''Sunset Review Initiated on September 1, {sic} 2019,'' dated October 21, 2019.

[7] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of Expedited Third Sunset Review of the Antidumping Duty Order on Refined Brown Aluminum Oxide from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–967]

Aluminum Extrusions From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Rescission of Review in Part; 2018–2019

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

SUMMARY: The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty (AD) order on aluminum extrusions from the People's Republic of China (China). The period of review (POR) is May 1, 2018 through April 30, 2019. Commerce preliminarily determines that none of the 52 companies for which an administrative review was requested, and not withdrawn, demonstrated eligibility for a separate rate, and are, therefore, all part of the China-wide entity. For the 205 companies for which all requests for administrative review have been timely withdrawn, we rescind this administrative review. Interested parties are invited to comment on these preliminary results.

DATES: Applicable December 31, 2019.

FOR FURTHER INFORMATION CONTACT: Heather Lui or Mark Flessner, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0016 or (202) 482–6312, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 15, 2019, Commerce published the notice of initiation of the administrative review of the AD order on aluminum extrusions from China [1] for the period May 1, 2018 through April 30, 2019, covering 257 companies.[2] All requests for administrative review were timely withdrawn with regard to 205 companies (listed in Appendix II to this notice), leaving 52 companies subject to

[1] *See Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order,* 76 FR 30650 (May 26, 2011) (*Order*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 33739 (July 15, 2019) (*Initiation Notice*); *see also Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 47242, 47248 (September 9, 2019) (*Correction Notice*), which contained a correction to the *Initiation Notice.*

administrative review.[3] For a complete description of the events that followed the initiation of this administrative review, *see* the Preliminary Decision Memorandum.[4]

The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's AD and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content. A list of topics included in the Preliminary Decision Memorandum is included as Appendix I to this notice.

Scope of the Order

The merchandise covered by the *Order* is aluminum extrusions which are shapes and forms, produced by an extrusion process, made from aluminum alloys having metallic elements corresponding to the alloy series designations published by The Aluminum Association commencing with the numbers 1, 3, and 6 (or proprietary equivalents or other certifying body equivalents).[5]

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (HTSUS): 7604.29.3060; 7604.29.3090; 7604.29.5050; 7604.29.5090; 8541.90.00.00, 8708.10.30.50, 8708.99.68.90, 6603.90.8100, 7616.99.51, 8479.89.94, 8481.90.9060, 8481.90.9085, 9031.90.9195, 8424.90.9080, 9405.99.4020, 9031.90.90.95, 7616.10.90.90, 7609.00.00, 7610.10.00, 7610.90.00, 7615.10.30, 7615.10.71, 7615.10.91, 7615.19.10, 7615.19.30, 7615.19.50, 7615.19.70, 7615.19.90, 7615.20.00, 7616.99.10, 7616.99.50, 8479.89.98, 8479.90.94, 8513.90.20, 9403.10.00, 9403.20.00, 7604.21.00.00, 7604.29.10.00, 7604.29.30.10, 7604.29.30.50, 7604.29.50.30, 7604.29.50.60, 7608.20.00.30, 7608.20.00.90, 8302.10.30.00, 8302.10.60.30, 8302.10.60.60, 8302.10.60.90, 8302.20.00.00, 8302.30.30.10, 8302.30.30.60, 8302.41.30.00, 8302.41.60.15, 8302.41.60.45, 8302.41.60.50, 8302.41.60.80, 8302.42.30.10, 8302.42.30.15, 8302.42.30.65, 8302.49.60.35, 8302.49.60.45, 8302.49.60.55, 8302.49.60.85, 8302.50.00.00, 8302.60.90.00, 8305.10.00.50, 8306.30.00.00, 8414.59.60.90, 8415.90.80.45, 8418.99.80.05, 8418.99.80.50, 8418.99.80.60, 8419.90.10.00, 8422.90.06.40, 8473.30.20.00, 8473.30.51.00, 8479.90.85.00, 8486.90.00.00, 8487.90.00.80, 8503.00.95.20, 8508.70.00.00, 8515.90.20.00, 8516.90.50.00, 8516.90.80.50, 8517.70.00.00, 8529.90.73.00, 8529.90.97.60, 8536.90.80.85, 8538.10.00.00, 8543.90.88.80, 8708.29.50.60, 8708.80.65.90, 8803.30.00.60, 9013.90.50.00, 9013.90.90.00, 9401.90.50.81, 9403.90.10.40, 9403.90.10.50, 9403.90.10.85, 9403.90.25.40, 9403.90.25.80, 9403.90.40.05, 9403.90.40.10, 9403.90.40.60, 9403.90.50.05, 9403.90.50.10, 9403.90.50.80, 9403.90.60.05, 9403.90.60.10, 9403.90.60.80, 9403.90.70.05, 9403.90.70.10, 9403.90.70.80, 9403.90.80.10, 9403.90.80.15, 9403.90.80.20, 9403.90.80.41, 9403.90.80.51, 9403.90.80.61, 9506.11.40.80, 9506.51.40.00, 9506.51.60.00, 9506.59.40.40, 9506.70.20.90, 9506.91.00.10, 9506.91.00.20, 9506.91.00.30, 9506.99.05.10, 9506.99.05.20, 9506.99.05.30, 9506.99.15.00, 9506.99.20.00, 9506.99.25.80, 9506.99.28.00, 9506.99.55.00, 9506.99.60.80, 9507.30.20.00, 9507.30.40.00, 9507.30.60.00, 9507.90.60.00, and 9603.90.80.50.

The subject merchandise entered as parts of other aluminum products may be classifiable under the following additional Chapter 76 subheadings: 7610.10, 7610.90, 7615.19, 7615.20, and 7616.99, as well as under other HTSUS chapters. In addition, fin evaporator coils may be classifiable under HTSUS numbers: 8418.99.80.50 and 8418.99.80.60. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this *Order* is dispositive.[6]

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act). For a full description of the methodology underlying our preliminary results of review, *see* the Preliminary Decision Memorandum.

Rescission of Administrative Review, in Part

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party or parties that requested a review withdraws the request within 90 days of the publication date of the notice of initiation of the requested review. As noted above, all requests for an administrative review were timely withdrawn for certain companies. Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding this administrative review with respect to 205 of the 257 companies named in the *Initiation Notice.*[7] *See* Appendix II for a list of these companies.[8]

Separate Rates

In the *Initiation Notice,* we informed parties of the opportunity to request a separate rate.[9] In proceedings involving non-market economy (NME) countries, Commerce begins with a rebuttable presumption that all companies within the NME country are subject to government control, and thus should be assigned a single weighted-average dumping margin. It is Commerce's policy to assign all exporters of merchandise subject to an administrative review involving an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Companies that wanted to qualify for separate rate status in this administrative review were required to timely file, as appropriate, a separate rate application (SRA) or a separate rate certification (SRC) to demonstrate their eligibility for a separate rate. SRAs and SRCs were due to Commerce within 30 calendar days of the publication of the *Initiation Notice.*[10] However, because certain information was corrected in the *Correction Notice,*[11] Commerce extended the deadline for submission of

[3] *See* Aluminum Extrusions Fair Trade Committee's and Endura Products, Inc.'s Letter, ''Aluminum Extrusions from the People's Republic of China: Partial Withdrawal of Request for Administrative Review,'' dated October 15, 2019.

[4] *See* Memorandum, ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Aluminum Extrusions from the People's Republic of China; 2018–2019,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] *See* Preliminary Decision Memorandum for a complete description of the scope of the *Order.*

[6] *See Order.*

[7] *See Initiation Notice,* 84 FR at 33743–46; *see also Correction Notice,* 84 FR at 47248.

[8] *See* Preliminary Decision Memorandum for further details.

[9] *See Initiation Notice,* 84 FR at 33740–41.

[10] *Id.,* 84 FR at 33741.

[11] *See Correction Notice,* 84 FR at 47248.

SRAs, SRCs, and certifications of no shipments to September 6, 2019.[12]

Of the companies for which an administrative review was requested, and not withdrawn, none submitted an SRA, SRC, or certification of no shipments. Therefore, no company for which a request for administrative review remains in place has demonstrated that it is entitled to a separate rate. We therefore preliminarily determine that the following companies are not eligible for a separate rate in this administrative review: (1) Activa Leisure Inc.; (2) Allied Maker Limited; (3) Birchwoods (Lin'an) Leisure Products Co., Ltd.; (4) Changzhou Changzhen Evaporator Co., Ltd.; (5) Changzhou Changzheng Evaporator Co., Ltd.; (6) Cosco (J.M.) Aluminum Co., Ltd.; (7) Cosco (JM) Aluminum Development Co. Ltd; (8) Dynabright International Group (HK) Ltd.; (9) Dynamic Technologies China; (10) ETLA Technology (Wuxi) Co., Ltd; (11) First Union Property Limited; (12) Foshan Jinlan Aluminum Co., Ltd.; (13) Foshan JinLan Aluminum Co., Ltd.; (14) Foshan Shanshui Fenglu Aluminum Co., Ltd.; (15) Guangdong Hao Mei Aluminum Co., Ltd.; (16) Guangdong Weiye Aluminum Factory Co., Ltd.; (17) Guangdong Xingfa Aluminum Co., Ltd.; (18) Hanwood Enterprises Limited; (19) Hanyung Metal (Suzhou) Co., Ltd.; (20) Honsense Development Company; (21) Innovative Aluminum (Hong Kong) Limited; (22) Jiangsu Changfa Refrigeration Co.; (23) Jiangyin Trust International Inc.; (24) Jiangyin Xinhong Doors and Windows Co., Ltd.; (25) JMA (HK) Company Limited; (26) Justhere Co., Ltd.; (27) Kanal Precision Aluminum Product Co., Ltd; (28) Kromet International; (29) Kromet International Inc.; (30) Kromet Intl Inc; (31) Longkou Donghai Trade Co., Ltd.; (32) Metaltek Group Co., Ltd.; (33) Ningbo Yili Import and Export Co., Ltd.; (34) North China Aluminum Co., Ltd.; (35) PanAsia Aluminum (China) Limited; (36) Pingguo Aluminum Company Limited; (37) Pingguo Asia Aluminum Co., Ltd.; (38) Popular Plastics Company Limited; (39) Precision Metal Works Ltd.; (40) Shangdong Nanshan Aluminum Co., Ltd.; (41) Shanghai Tongtai Precise Aluminum Alloy Manufacturing Co., Ltd.; (42) Shenzhen Jiuyuan Co., Ltd.; (43) Skyline Exhibit Systems (Shanghai) Co., Ltd.; (44) Summit Heat Sinks Metal Co., Ltd; (45) tenKsolar (Shanghai) Co., Ltd.; (46) Tianjin Jinmao Import & Export Corp., Ltd.; (47) Tianjin Ruxin Electric Heat Transmission Technology Co., Ltd.; (48) Top-Wok Metal Co., Ltd.; (49) Union Industry (Asia) Co., Ltd.; (50) Zhejiang Anji Xinxiang Aluminum Co., Ltd.; (51) Zhejiang Yongkang Listar Aluminum Industry Co., Ltd.; and (52) Zhongshan Gold Mountain Aluminum Factory Ltd.[13]

China-Wide Entity

We preliminarily find that the 52 companies listed above are part of the China-wide entity in this administrative review because they failed to submit an SRA, SRC, or certification of no shipments.

Commerce's policy regarding conditional review of the China-wide entity applies to this administrative review.[14] Under this policy, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. Because no party requested a review of the China-wide entity in the instant review, and because Commerce did not self-initiate such a review, the entity is not under review, and the entity's current rate (*i.e.,* 86.01 percent) [15] is not subject to change.

Adjustments for Countervailable Subsidies

Because no company established eligibility for an adjustment under section 777A(f) of the Act for countervailable domestic subsidies, for these preliminary results, Commerce did not make an adjustment pursuant to section 777A(f) of the Act for countervailable domestic subsidies for any companies under review. Furthermore, because the China-wide entity is not under review, we made no adjustment for countervailable export subsidies for the China-wide entity pursuant to section 772(c)(1)(C) of the Act.

Disclosure and Public Comment

Normally, Commerce discloses to interested parties the calculations performed in connection with the preliminary results within five days of the public announcement, or if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). However, because Commerce did not calculate weighted-average dumping margins for any companies in this review, nor for the China-wide entity, there is nothing further to disclose. This satisfies our regulatory obligation.

Interested parties may submit case briefs no later than 30 days after the date of publication of this notice.[16] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the case briefs are filed.[17] Parties who submit case or rebuttal briefs in this review are requested to submit with each argument: (a) A statement of the issue, (b) a brief summary of the argument, and (c) a table of authorities.[18]

Any interested party may request a hearing within 30 days of publication of this notice.[19] Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the case and rebuttal briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing to be held at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.[20]

All submissions, with limited exceptions, must be filed electronically using ACCESS.[21] An electronically filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5 p.m. Eastern Time (ET) on the due date. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with the APO/Dockets Unit in Room 18022 and stamped with the date and time of receipt by 5 p.m. ET on the due date.[22]

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, which will include the results of our analysis of all issues raised in any briefs received, within 120 days of publication of these preliminary results in the

[12] *See* Memorandum, ''2018–2019 Administrative Review of the Antidumping Duty Order on Aluminum Extrusions from the People's Republic of China: Correction of Initiation Notice and Deadlines for Notice of No Sales, Separate Rate Application/Certifications, and Quantity and Value Questionnaire Responses,'' dated August 5, 2019.

[13] *See* Preliminary Decision Memorandum at 9–11.

[14] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963, 65970 (November 4, 2013).

[15] *See Aluminum Extrusions from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2017–2018,* 84 FR 56164, 56165 (October 21, 2019).

[16] *See* 19 CFR 351.309(c)(1)(ii).

[17] *See* 19 CFR 351.309(d).

[18] *See* 19 CFR 351.309(c)(2) and (d)(2).

[19] *See* 19 CFR 351.310(c).

[20] *See* 19 CFR 351.310(d).

[21] *See generally* 19 CFR 351.303.

[22] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

Federal Register, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results of this review, Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.[23] Commerce intends to issue assessment instructions to CBP 15 days after publication of the final results of this review.

We intend to instruct CBP to liquidate entries containing subject merchandise exported by the China-wide entity at the China-wide rate. Additionally, if Commerce determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number will be liquidated at the China-wide rate.[24]

For the companies for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue assessment instructions to CBP for those companies 15 days after publication of this notice.

Cash Deposit Requirements

The following cash deposit requirements for estimated antidumping duties, when imposed, will apply to all shipments of subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) If the companies preliminarily determined to be eligible for a separate rate receive a separate rate in the final results of this administrative review, their cash deposit rate will be equal to the weighted-average dumping margin established in the final results of this review, as adjusted for domestic and export subsidies (except that if that rate is *de minimis,* then the cash deposit rate will be zero); (2) for any previously investigated or reviewed Chinese and non-Chinese exporters that are not under review in this segment of the proceeding but that received a separate rate in the most recently completed segment of this proceeding, the cash deposit rate will continue to be the exporter-specific rate published for the most recently completed segment of this proceeding; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that of the China-wide entity; (4) for the China-wide entity, the cash deposit rate will be 86.01 percent; and (5) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter.

These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary 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 to Interested Parties

We are issuing and publishing notice of these preliminary results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: December 20, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Respondent Selection
V. Rescission of Administrative Review, in Part
VI. Non-Market Economy Country
VII. Separate Rates
VIII. The China-Wide Entity
IX. Adjustments for Countervailable Subsidies
X. Conclusion

Appendix II

Companies for Which This Administrative Review Is Being Rescinded

1. Activa International Inc.
2. Acro Import and Export Co.
3. Agilent Technologies Co. Ltd (China)
4. Alnan Aluminum Co., Ltd.
5. Alnan Aluminum Ltd.
6. Aluminicaste Fundicion de Mexico
7. AMC Limited
8. AMC Ltd.
9. Anji Chang Hong Chain Manufacturing
10. Anshan Zhongjda Industry Co., Ltd
11. Aoda Aluminium (Hong Kong) Co., Limited
12. AsiaAlum Group
13. Atlas Integrated Manufacturing Ltd.
14. Bath Fitter
15. Behr-Hella Thermocontrol (Shanghai) Co. Ltd.
16. Belton (Asia) Development Limited
17. Belton (Asia) Development Ltd.
18. Bolnar Hong Kong Ltd.
19. Bracalente Metal Products (Suzhou) Co., Ltd.
20. Brilliance General Equipment Co., Ltd.
21. Changshu Changsheng Aluminum Products Co., Ltd.
22. Changshu Changshen Aluminum Products Co., Ltd.
23. Changzhou Tenglong Auto Accessories Manufacturing Co. Ltd
24. Changzhou Tenglong Auto Parts Co Ltd
25. Changzhou Tenglong Auto Parts Co., Ltd.
26. China Square
27. China Square Industrial Ltd
28. China Square Industrial Co.
29. China Zhoungwang Holdings, Ltd.
30. Chiping One Stop Industrial & Trade Co., Ltd.
31. Classic & Contemporary Inc.
32. Clear Sky Inc.
33. Colclisa S.A. de C.V.
34. CRRC Changzhou Auto Parts Co., Ltd.
35. Dalian Huachange Aquatic Products
36. Dalian Liwang Trade Co., Ltd.
37. Danfoss Micro Channel Heat Exchanger (Jia Xing) Co., Ltd.
38. Daya Hardware Co Ltd
39. Dongguan Aoda Aluminum Co., Ltd.
40. Dongguan Dazhan Metal Co., Ltd.
41. Dongguan Golden Tiger Hardware Industrial Co., Ltd.
42. Dongguang Aoda Aluminum Co., Ltd.
43. Dragonluxe Limited
44. Ever Extend Ent. Ltd.
45. Fenghua Metal Product Factory
46. FookShing Metal & Plastic Co. Ltd.
47. Foreign Trade Co. of Suzhou New & High-Tech Industrial Development Zone
48. Foshan City Nanhai Hongjia Aluminum Alloy Co., Ltd.
49. Foshan Golden Source Aluminum Products Co., Ltd.
50. Foshan Guangcheng Aluminium Co., Ltd
51. Foshan JMA Aluminum Company Limited
52. Foshan Nanhai Niu Yuan Hardware Product Co., Ltd.
53. Foshan Shunde Aoneng Electrical Appliances Co., Ltd
54. Foshan Yong Li Jian Aluminum Co., Ltd.
55. Fujian Sanchuan Aluminum Co., Ltd.
56. Fukang Aluminum & Plastic Import and Export Co., Ltd.
57. Fuzhou Sunmodo New Energy Equipment
58. Gaotang Xinhai Economy & Trade Co., Ltd.
59. Genimex Shanghai, Ltd.
60. Global Hi-Tek Precision Co. Ltd
61. Global PMX Dongguan Co., Ltd.
62. Global Point Technology (Far East) Limited
63. Gold Mountain International Development, Ltd.

[23] *See* 19 CFR 351.212(b)(1).

[24] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

64. Golden Dragon Precise Copper Tube Group, Inc.
65. Gran Cabrio Capital Pte. Ltd.
66. Gree Electric Appliances
67. Green Line Hose & Fittings
68. GT88 Capital Pte. Ltd.
69. Guang Ya Aluminium Industries (HK) Ltd.
70. Guang Ya Aluminium Industries Co. Ltd.
71. Guang Ya Aluminum Industries Company Ltd
72. Guangcheng Aluminum Co., Ltd
73. Guangdong Jianmei Aluminum Profile Company Limited
74. Guangdong JMA Aluminum Profile Factory (Group) Co., Ltd.
75. Guangdong Midea
76. Guangdong Midea Microwave and Electrical Appliances
77. Guangdong Nanhai Foodstuffs Imp. & Exp. Co., Ltd.
78. Guangdong Whirlpool Electrical Appliances Co., Ltd.
79. Guangdong Xin Wei Aluminum Products Co., Ltd.
80. Guangdong Yonglijian Aluminum Co., Ltd.
81. Guangdong Zhongya Aluminum Company Ltd.
82. Guangzhou Jangho Curtain Wall System Engineering Co., Ltd.
83. Guangzhou Mingcan Die-Casting Hardware Products Co., Ltd.
84. Hangzhou Xingyi Metal Products Co., Ltd.
85. Hanyung Alcoba Co., Ltd.
86. Hanyung Alcobis Co., Ltd.
87. Hao Mei Aluminum Co., Ltd.
88. Hao Mei Aluminum International Co., Ltd.
89. Hebei Xusen Wire Mesh Products Co., Ltd.
90. Henan New Kelong Electrical Appliances Co., Ltd.
91. Henan Zhongduo Aluminum Magnesium New Material Co, Ltd.
92. Hitachi High-Technologies (Shanghai) Co., Ltd.
93. Hong Kong Gree Electric Appliances Sales Limited
94. Hong Kong Modern Non-Ferrous Metal
95. Hui Mei Gao Aluminum Foshan Co., Ltd.
96. Huixin Aluminum
97. IDEX Dinglee Technology (Tianjin) Co., Ltd.
98. IDEX Health
99. IDEX Technology Suzhou Co., Ltd.
100. iSource Asia
101. Jackson Travel Products Co., Ltd.
102. Jangho Curtain Wall Hong Kong Ltd.
103. Jiangmen Jianghai District Foreign Economic Enterprise Corp. Ltd.
104. Jiangmen Jianghai Foreign Ent. Gen.
105. Jiangmen Qunxing Hardware Diecasting Co., Ltd.
106. Jiangyin Suncitygaylin
107. Jiaxing Jackson Travel Products Co., Ltd.
108. Jiaxing Taixin Metal Products Co., Ltd.
109. Jiuyan Co., Ltd.
110. Johnson Precision Engineering (Suzhou) Co., Ltd.
111. Kam Kiu Aluminum Products Sdn Bhd
112. Kartlon Aluminum Company Ltd.
113. Kong Ah International Company Limited
114. Kunshan Giant Light Metal Technology Co., Ltd.
115. Liaoning Zhong Da Industrial Aluminum Co., Ltd.
116. Liaoning Zhongwang Group Co., Ltd.
117. Liaoyang Zhongwang Aluminum Profile Co. Ltd.
118. MAAX Bath Inc.
119. MAHLE Holding (China) Co., Ltd
120. Metal Tech Co Ltd
121. Metaltek Metal Industry Co., Ltd.
122. Midea Air Conditioning Equipment Co., Ltd.
123. Midea Electric Trading Co., Pte Ltd
124. Midea International Trading Co., Ltd.
125. Midea International Training Co., Ltd.
126. Miland Luck Limited
127. Nanhai Textiles Import & Export Co., Ltd.
128. New Asia Aluminum & Stainless Steel Product Co., Ltd.
129. New Zhongya Aluminum Factory
130. Nidec Sankyo (Zhejang) Corporation
131. Nidec Sankyo Singapore Pte. Ltd.
132. Nidec Sankyo Zhejiang Corporation
133. Ningbo Coaster International Co., Ltd.
134. Ningbo Hi Tech Reliable Manufacturing Company
135. Ningbo Innopower Tengda Machinery
136. Ningbo Ivy Daily Commodity Co., Ltd.
137. North Fenghua Aluminum Ltd.
138. Northern States Metals
139. PENCOM Dongguan China
140. Pengcheng Aluminum Enterprise Inc.
141. Permasteelisa Hong Kong Limited
142. Permasteelisa South China Factory
143. Press Metal International Ltd.
144. Qingdao Sea Nova Building
145. Samuel, Son & Co., Ltd.
146. Sanchuan Aluminum Co., Ltd.
147. Sanhua (Hangzhou) Micro Channel Heat Exchanger Co., Ltd
148. Shandong Fukang Aluminum & Plastic Co. LTD
149. Shandong Huajian Aluminum Group
150. Shangdong Huasheng Pesticide Machinery Co.
151. Shanghai Automobile Air Conditioner Accessories Ltd.
152. Shanghai Automobile Air-Conditioner Accessories Co Ltd
153. Shanghai Canghai Aluminum Tube Packaging Co., Ltd
154. Shanghai Dofiberone Composites Co. Ltd.
155. Shanghai Dongsheng Metal
156. Shanghai Shen Hang Imp & Exp Co., Ltd.
157. Shanghai Top-Ranking Aluminum Products Co., LTD
158. Shanghai Top-Ranking New Materials Co., Ltd.
159. Shenyang Yuanda Aluminum Industry Engineering Co. Ltd.
160. Shenzhen Hudson Technology Development Co.
161. Sihui Shi Guo Yao Aluminum Co., Ltd.
162. Sincere Profit Limited
163. Southwest Aluminum (Group) Co., Ltd.
164. Springs Window Fashions De Victoria
165. Summit Plastics Nanjing Co. Ltd
166. Suzhou JRP Import & Export Co., Ltd.
167. Suzhou New Hongji Precision Part Co.
168. Tai-Ao Aluminum (Taishan) Co. Ltd.
169. Taishan City Kam Kiu Aluminium Extrusion Co., Ltd.
170. Taitoh Machinery Shanghai Co Ltd
171. Taizhou Lifeng Manufacturing Co., Ltd.
172. Taizhou United Imp. & Exp. Co., Ltd.
173. Tianjin Ganglv Nonferrous Metal Materials Co., Ltd.
174. Tianjin Xiandai Plastic & Aluminum Products Co., Ltd.
175. Tiazhou Lifeng Manufacturing Corporation
176. Traffic Brick Network, LLC
177. Union Aluminum (SIP) Co.
178. USA Worldwide Door Components (Pinghu) Co., Ltd.
179. Wenzhou Shengbo Decoration & Hardware
180. Wenzhou Yongtai Electric Co., Ltd.
181. Whirlpool (Guangdong)
182. Whirlpool Canada L.P.
183. Whirlpool Microwave Products Development Ltd.
184. Wonjin Autoparts
185. Worldwide Door Components, Inc.
186. WTI Building Products, Ltd.
187. Wuxi Lutong Fiberglass Doors Co., Ltd.
188. Xin Wei Aluminum Co.
189. Xin Wei Aluminum Company Limited
190. Xinchang Yongqiang Air Conditioning Accessories Co., Ltd.
191. Xinya Aluminum & Stainless Steel Product Co., Ltd.
192. Yuyao Fanshun Import & Export Co., Ltd.
193. Yuyao Haoshen Import & Export
194. Zahoqing China Square Industry Limited
195. Zhaoqing Asia Aluminum Factory Company Ltd.
196. Zhaoqing China Square Industrial Ltd.
197. Zhaoqing China Square Industry Limited
198. Zhaoqing New Zhongya Aluminum Co., Ltd.
199. Zhejiang Lilies Industrial and Commercial Co
200. Zhejiang Yili Automobile Air Condition Co., Ltd
201. Zhejiang Zhengte Group Co., Ltd.
202. Zhenjiang Xinlong Group Co., Ltd.
203. Zhongshan Daya Hardware Co., Ltd.
204. Zhongya Shaped Aluminum (HK) Holding Limited
205. Zhuhai Runxingtai Electrical Equipment Co., Ltd.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–502]

Welded Carbon Steel Standard Pipes and Tubes From India: Rescission of Antidumping Duty Administrative Review, in Part; 2018–2019

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

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review, in part, on welded carbon steel standard pipes and tubes (pipes and tubes) from India

covering the period of review (POR) May 1, 2018, through April 30, 2019.

DATES: Applicable December 31, 2019.

FOR FURTHER INFORMATION CONTACT: Yang Jin Chun, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5760.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 2019, Commerce published a notice of opportunity to request an administrative review of the antidumping duty order on pipes and tubes from India for the POR May 1, 2018, through April 30, 2019.[1] On July 15, 2019, in response to timely requests from interested parties, and in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the antidumping duty order on pipes and tubes from India with respect to 29 companies.[2]

On October 15, 2019, Indendence Tube Corporation and Southland Tube, Incorporated (collectively Nucor Pipe Mills) and Wheatland Tube timely withdrew their requests for an administrative review for APL Apollo Tubes Ltd., Asian Contec Ltd., Bhandari Foils & Tubes Ltd., Bhushan Steel Ltd., Blue Moon Logistics Pvt. Ltd., CH Robinson Worldwide, Ess-Kay Engineers, Manushi Enterprise & Nishi Boring Corporation, Fiber Tech Composite Pvt. Ltd., GCL Private Limited, Goodluck India Ltd., GVN Fuels Ltd., Hydromatik, Jindal Quality Tubular Ltd., KLT Automatic & Tubular Products Ltd., Lloyds Line Pipes Ltd., MARINEtrans India Private Ltd., Patton International Ltd., Surya Global Steel Tubes Ltd., Surya Roshni Ltd., Zenith Birla (India) Ltd., Zenith Birla Steels Private Ltd., and Zenith Dyeintermediates Ltd.[3] Nucor Pipe Mills additionally withdrew its request for an administrative review of Raajratna Ventures Ltd., Ratnamani Metals & Tubes Ltd., SAR Transport Systems Pvt. Ltd., Vallourec Heat Exchanger Tubes Ltd., and Welspun India Ltd.

Rescission of Administrative Review in Part

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review ''in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.'' Because Nucor Pipe Mills and Wheatland Tube withdrew their requests for review within the 90-day time limit,[4] and because we received no other requests for review of these respondents for which the review requests were withdrawn, we are rescinding the administrative review of the order, in part.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. For the respondents for which the review is rescinded, antidumping duties shall be assessed at the rate equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as 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 doubled antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: December 20, 2019.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019–28263 Filed 12–30–19; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 84 FR 18479 (May 1, 2019).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 33739 (July 15, 2019).

[3] *See* Nucor Pipe Mills' Letter to Commerce, ''Partial Withdrawal of Request for Administrative Review,'' dated October 15, 2019, and Wheatland Tube's Letter to Commerce, ''Withdrawal of Request for Administrative Review'' dated October 15, 2019.

[4] The 90-day period ended on Sunday, October 13, 2019, and Monday, October 14, 2019, was a federal holiday. Therefore, the withdrawal letters were due on Tuesday, October 15, 2019. *See* 19 CFR 351.301(b)(1) (''For both electronically filed and manually filed documents, if the applicable due date falls on a non-business day, the Secretary will accept documents that are filed on the next business day.'')

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV162

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold a four-day meeting to consider actions affecting the Gulf of Mexico fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will convene Monday, January 27 through Thursday, January 30, 2020. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will take place at the Hyatt Centric French Quarter Hotel, 800 Iberville Street, New Orleans, LA 70112; telephone: (504) 586–0800.

Council address: Gulf of Mexico Fishery Management Council, 4107 W Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Dr. Carrie Simmons, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Agenda

Monday, January 27, 2020; 8:30 a.m.–5:30 p.m.

The meeting will begin with the Administrative/Budget Committee receiving an update on the 2015–2019 Carryover Request and Funded Contractual Projects; review of Proposed

2020 Budget and Activities, updates to the Administrative Handbook, and Review of Advisory Panels.

The Coral Management Committee will discuss recommendations to the Florida Keys National Marine Sanctuary and recommendations made by the Joint Gulf and South Atlantic Spiny Lobster Advisory Panel.

Sustainable Fisheries Committee will discuss Interagency Coordination for Aquaculture Science and Management; review Public Hearing Draft Amendment *Reef Fish* 48/*Red Drum* 5: Status Determination Criteria and Optimum Yield for Reef Fish and Red Drum; and, draft options for Framework Action to evaluate Trolling Provisions in Madison-Swanson and Steamboat Lumps. The Committee will also discuss Section 102: Fishery Management Measures of the Modernizing Recreational Fisheries Management Act of 2018 and Allocation issues.

Tuesday, January 28, 2020; 8:30 a.m.–5:30 p.m.

The Reef Fish Management Committee will review Reef Fish and Coastal Migratory Pelagics (CMP) Landings and Draft Amendments 36B and 36C: Modifications to Commercial Individual Fishing Quota (IFQ) Programs and Presentations. The Committee will review Draft Framework Action to Modify *Greater Amberjack* Recreational Management Measures and receive the Scientific and Statistical Committee's (SSC) report for Lane *Snapper* Fishing Effort Survey (FES)-Adjusted Catch Recommendations. The Committee will also discuss Draft Options: Amendment 53 for *Red Grouper* Catch Limits and Sector Allocations.

National Marine Fisheries Service (NMFS) will hold a Question and Answer session immediately following the Reef Fish Committee.

Wednesday, January 29, 2020; 8:30 a.m.–5:30 p.m.

The Reef Fish Management Committee will discuss Draft Amendment 52: *Red Snapper* Sector Allocations; receive State Management Performance Reports for 2019 Private Angling *Red Snapper* Fishing Season, and the January 2020 SSC Meeting Summary report.

The Migratory Species Committee will receive summary reports from the Highly Migratory Species (HMS) and International Commission for the Conservation of Atlantic Tunas (ICCAT) Advisory Panel meetings; and, a presentation on *Shark* Population Abundance Trends and Depredation.

Full Council will convene mid-morning with a Call to Order, Announcements, and Introductions; Adoption of Agenda and Approval of Minutes. Council will review Exempted Fishing Permit (EFP) Applications and public comments (if any); and, receive a presentation on Louisiana's Law Enforcement Efforts and update on Southeast For-Hire Integrated Electronic Reporting (SEFHIER). The Council will hold public comment testimony beginning at 1:45 p.m. until 5:30 p.m. for the Florida Keys National Marine Sanctuary Proposed Expansion; and, open testimony on other fishery issues or concerns. Anyone wishing to speak during public comment testimony should sign in at the registration station located at the entrance of the meeting room.

Thursday, January 30, 2020; 8:30 a.m.–4 p.m.

The Council will receive reports from the following management committees: Administrative/Budget, Coral, Sustainable Fisheries, Migratory Species and Reef Fish. The Council will vote on Exempted Fishing Permit (EFP) applications, if any; and receive updates from the following supporting agencies: South Atlantic Fishery Management Council; NOAA Office of Law Enforcement (OLE), Gulf States Marine Fisheries Commission; U.S. Coast Guard; U.S. Fish and Wildlife Service; Department of State.

Lastly, the Council will discuss Other Business items; Status Update on Proposed Turtle Excluder Devices (TED) Regulations for Skimmer Trawls.

—Meeting Adjourns

The meeting will be broadcast via webinar. You may register for the webinar by visiting *www.gulfcouncil.org* and clicking on the Council meeting on the calendar.

The timing and order in which agenda items are addressed may change as required to effectively address the issue, and the latest version along with other meeting materials will be posted on the website as they become available.

Although other non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meeting. Actions will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Kathy Pereira, (813) 348–1630, at least 5 days prior to the meeting date.

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

Dated: December 23, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–28199 Filed 12–30–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XV160]

Western Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold an Archipelagic Plan Team (APT) meeting to discuss and make recommendations on fishery management issues in the Western Pacific Region.

DATES: The APT will meet on Thursday, January 23, 2020, between 1 p.m. and 5 p.m., Hawaii Standard Time. For specific times and agendas, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The APT meeting will be held at the Council office, 1164 Bishop St. Suite 1400, Honolulu, HI 96813 and by teleconference and webinar. The teleconference will be conducted by telephone and by web. The teleconference numbers are U.S. toll-free: 1–888–482–3560 or International Access: +1 647 723–3959, and Access Code: 5228220. The webinar can be accessed at: *https://wprfmc.webex.com/join/info.wpcouncilnoaa.gov.*

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: Public comment periods will be provided in the agenda. The order in which agenda items are addressed may change. The

meetings will run as late as necessary to complete scheduled business.

Schedule and Agenda for the APT Meeting

Thursday, January 23, 1 p.m.–5 p.m.

1. Welcome and Introductions
2. Approval of Draft Agenda & Assignment of Rapporteurs
3. Interim Measure for the American Samoa Bottomfish Fishery
4. Potential Reclassification of the Territory Bottomfish Management Unit Species (BMUS) Complex
5. Options to the BMUS in the American Samoa and Marianas Fishery Ecosystem Plan (Action Item)
6. Revisions to the Archipelagic Stock Assessment and Fishery Evaluation Reports
7. P-Star and SEEM Analysis for the Marianas Bottomfish Fishery
8. Updates to the Data Collection Projects
   A. Marianas Shark Depredation
   B. Small Boat Electronic Reporting
9. Public Comment
10. Other Business
11. Plan Team Discussion and Recommendations

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: December 23, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–28197 Filed 12–30–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XR081]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Seabird Research Activities in Central California

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

ACTION: Notice; incidental harassment authorization; request for comments on proposed Renewal.

SUMMARY: NMFS received a request from Point Blue Conservation Science (Point Blue) for the Renewal of their initial incidental harassment authorization (IHA) to take marine mammals incidental to seabird and pinniped research activities in central California. These activities are identical to those covered in the initial authorization. Pursuant to the Marine Mammal Protection Act (MMPA), prior to issuing the initial IHA, NMFS requested comments on both the proposed IHA and the potential for renewing the initial authorization if certain requirements were satisfied. While Renewal requirements have been satisfied, NMFS is now republishing the proposed Renewal IHA and providing an additional 15-day comment period to allow for any additional comments on the proposed Renewal not previously provided during the initial 30-day comment period or the first 15-day additional comment period.

DATES: Comments and information must be received no later than January 15, 2020.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.Fowler@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection*-act without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Amy Fowler, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the original application, Renewal request, and supporting documents (including NMFS notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as ''mitigation measures''). Monitoring and reporting of such takings are also required. The meaning of key terms such as ''take,'' ''harassment,'' and ''negligible impact'' can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency's regulations at 50 CFR 216.103.

NMFS' regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed one year for each reauthorization. In the notice of proposed IHA for the initial authorization, NMFS described the circumstances under which we would consider issuing a Renewal for this activity, and requested public comment on a potential Renewal under those circumstances. Since that time, we have made minor changes to the Renewal process, none of which materially affects the scope of a Renewal IHA or the conditions for receiving one.

Specifically, on a case-by-case basis, NMFS may issue a one-year IHA Renewal when (1) up to another year of identical or nearly identical activities as described in the Specified Activities section is planned or (2) the activities would not be completed by the time the IHA expires and a second IHA would allow for completion of the activities beyond that described in the *Dates and Duration* section of the initial IHA. The expiration date of the Renewal IHA cannot extend beyond one year from expiration of the initial IHA. All of the following conditions must be met in order to issue a Renewal:

- A request for Renewal is received no later than 60 days prior to the needed Renewal. Previously the request was to be received no later than 60 days prior to expiration of the initial IHA. But where authorization under Renewal IHAs will not extend beyond one year from expiration of the initial IHA regardless of when the renewal application is received and where it is up to the applicant to determine when take coverage is needed, a request can be received later than 60 days prior to expiration of the initial IHA provided NMFS has 60 days to process the renewal.
- The request for Renewal must include the following:

(1) An explanation that the activities to be conducted beyond the initial IHA dates either are identical to the previously analyzed activities or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, take estimates, or mitigation and monitoring requirements; and

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

- Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures remain the same and appropriate, and the initial findings remain valid.

For this Renewal IHA, the request was received later than 60 days prior to expiration of the initial IHA. However, the other qualifications were met and these circumstances initiated the agency's consideration of whether the original 60-day deadline requirement was necessary and appropriate.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed Renewal. In this case, the agency inadvertently did not provide direct notice to a commenter. Therefore this notice is being republished to allow an additional 15 days of public comment (for a total of 60 days), with direct notice provided to that commenter.

A description of the Renewal process may be found on our website at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals.* Any comments that were received on the potential Renewal, along with relevant comments on the initial IHA, have been considered in the development of this proposed Renewal IHA, and agency responses to applicable comments have been included in this notice. NMFS will consider any additional public comments along with any comments received during the first 15-day comment period prior to making any final decision on the issuance of the requested Renewal, and agency responses will be provided in the final notice of our decision.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment. This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the renewal IHA qualifies to be categorically excluded from further NEPA review. We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

History of Request

On June 28, 2018, NMFS issued an IHA to Point Blue to take marine mammals incidental to seabird research activities in central California (83 FR 31372; July 5, 2018), effective from July 7, 2018 through July 6, 2019. On August 20, 2019, NMFS received an application for the Renewal of that initial IHA. As described in the application for Renewal, the activities for which incidental take is requested are identical to those covered in the initial authorization. As required, the applicant also provided a preliminary monitoring report consisting of the report of actual takes from January 1, 2018 through December 31, 2018 plus an updated report of takes from January 1, 2019 through the expiration of the initial IHA on July 6, 2019, which was provided following publication of the first proposed Renewal notice. Both reports are available at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-activities* and confirm that the applicant has implemented the required mitigation and monitoring. The reports also show that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted. On November 14, 2019 we published the notice of the proposed Renewal IHA (84 FR 61892) that is being republished here.

Description of the Specified Activities and Anticipated Impacts

Point Blue plans to monitor and census seabird populations, observe seabird nesting habitat, restore nesting burrows, and resupply a field station annually in central California. The planned activities occur on Southeast Farallon Island (SEFI), Año Nuevo Island (ANO), and Point Reyes National Seashore (PRNS). Point Blue, along with partners Oikonos Ecosystem Knowledge and PRNS, have been conducting seabird research activities at these locations for over 30 years. This research is conducted under cooperative agreements with the U.S. Fish and Wildlife Service (USFWS) in consultation with the Gulf of the Farallones National Marine Sanctuary. The seabird research and monitoring activities planned by Point Blue are identical to those analyzed in the initial IHA issued by NMFS, described in detail in the notice of Proposed IHA (83 FR 20045; May 7, 2018).

Presence of researchers has the potential to disturb pinnipeds hauled out at SEFI, ANO, and PRNS. As in the initial authorization, NMFS anticipates that take, by Level B harassment only, of California sea lions (*Zalophus californianus*), harbor seals (*Phoca vitulina*), northern elephant seals (*Mirounga angustirostris*), and Steller sea lions (*Eumetopias jubatus*) could

result from the specified activity (83 FR 31372; July 5, 2018).

Detailed Description of the Activity

A detailed description of the seabird research and monitoring activities for which take is proposed here may be found in the notices of the Proposed and Final IHAs for the initial authorization (83 FR 20045, May 7, 2018; 83 FR 31372, July 5, 2018). The locations (as described in the *Specific Geographic Region* section of the initial IHA), timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the previous notices. The proposed Renewal would be effective from the date of issuance through July 6, 2020.

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which authorization of take is proposed here, including information on abundance, status, distribution, and hearing, may be found in the notice of the Proposed IHA for the initial authorization (83 FR 20045; May 7, 2018). NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature. The 2018 Stock Assessment Report notes that the estimated abundance of California sea lions has decreased slightly, however, neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the section *Description of Marine Mammals in the Area of Specified Activities* contained in the supporting documents for the initial IHA.

Potential Effects on Marine Mammals and their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which take is proposed here may be found in the notice of the Proposed IHA for the initial authorization (83 FR 20045; May 7, 2018). NMFS has reviewed the monitoring data from the initial IHA, recent Stock Assessment Reports, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects our initial analysis of impacts on marine mammals and their habitat.

Estimated Take

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the notices of the Proposed and Final IHAs for the initial authorization (83 FR 20045, May 7, 2018; 83 FR 31372, July 5, 2018). Specifically, the expected number of survey days, and marine mammal occurrence data applicable to this authorization remain unchanged from the previously issued IHA. Similarly, the stocks taken, methods of take, and types of take remain unchanged from the previously issued IHA, as do the number of takes, which are indicated below in Table 1. As in the initial IHA, the take estimates are based on historical data from the previous five monitoring reports (2013–2014, 2014–2015, 2015–2016, 2016–2017, and 2017–2018) to generate 95 percent confidence interval maximums (assuming normal distribution) using STATA, a genera-purpose statistical computer package. Takes recorded in all previous monitoring reports were based on occurrences that are consistent with Levels 2 and 3 of the three-point harassment scale (see Table 2).

TABLE 1—POPULATION ABUNDANCE ESTIMATES, TOTAL PROPOSED LEVEL B TAKE, AND PERCENTAGE OF POPULATION THAT MAY BE TAKEN

Species	Stock	Stock abundance	Total proposed Level B take	Percentage of stock or population
California sea lion	U.S	257,606	32,623	12.7
Northern elephant seal	California breeding stock	179,000	239	0.13
Harbor seal	California	30,968	304	0.98
Steller sea lion	Eastern U.S	41,638	43	0.10

Description of Proposed Mitigation, Monitoring and Reporting Measures

The proposed mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the notice announcing the issuance of the initial IHA (83 FR 31372; July 5, 2018), and the discussion of the least practicable adverse impact included in that document remains accurate. The following measures are proposed for this Renewal:

To reduce the potential for disturbance from acoustic and visual stimuli associated with survey activities Point Blue will implement the following mitigation measures for marine mammals:

(1) Slow approach to beaches for boat landings to avoid stampede, provide animals opportunity to enter water, and avoid vessel strikes;

(2) Observe a site from a distance, using binoculars if necessary, to detect any marine mammals prior to approach to determine if mitigation is required (*i.e.,* site surveys will not be conducted if fur seals are present; if other pinnipeds are present, researchers will approach with caution, walking slowly, quietly, and close to the ground to avoid surprising any hauled-out individuals and to reduce flushing/stampeding of individuals);

(3) Avoid pinnipeds along access ways to sites by locating and taking a different access way. Researchers will keep a safe distance from and not approach any marine mammal while conducting research, unless it is absolutely necessary to flush a marine mammal in order to continue conducting research (*i.e.,* if a site cannot be accessed or sampled due to the presence of pinnipeds);

(4) Cease or delay visits if the number of takes that have been granted are met, if a species for which takes were not granted is observed (*e.g.,* northern fur seals and Guadalupe fur seals), or if pups are present;

(5) Monitor for offshore predators and do not approach hauled out pinnipeds if great white sharks (*Carcharodon carcharias*) or killer whales (*Orcinus orca*) are present. If Point Blue and/or its designees see pinniped predators in the area, they must not disturb the pinnipeds until the area is free of predators;

(6) Keep voices hushed and bodies low to the ground in the visual presence of pinnipeds;

(7) Conduct seabird observations at North Landing on SEFI in an observation blind, shielded from the view of hauled out pinnipeds;

(8) Crawl slowly to access seabird nest boxes on ANI if pinnipeds are within view;

(9) Coordinate research visits to intertidal areas of SEFI (to reduce potential take) and coordinate research goals for ANI to minimize the number of trips to the island; and

(10) Require beach landings on ANI only occur after any pinnipeds that might be present on the landing beach have entered the water.

Point Blue will contribute to the knowledge of pinnipeds in California by noting observations of: (1) Unusual behaviors, numbers, or distributions of pinnipeds, such that any potential follow-up research can be conducted by the appropriate personnel; (2) tag-bearing pinnipeds or carcasses, allowing transmittal of the information to appropriate agencies and personnel; and (3) rare or unusual species of marine mammals for agency follow-up.

Proposed monitoring protocols for Point Blue will include the following:

(1) Record of date, time, and location (or closest point of ingress) of each visit to the research site;

(2) Composition of the marine mammals sighted, such as species, gender and life history stage (*e.g.,* adult, sub-adult, pup);

(3) Information on the numbers (by species) of marine mammals observed during the activities;

(4) Estimated number of marine mammals (by species) that may have been harassed during the activities;

(5) Behavioral responses or modifications of behaviors that may be attributed to the specific activities and a description of the specific activities occurring during that time (*e.g.,* pedestrian approach, vessel approach); and

(6) Information on the weather, including the tidal state and horizontal visibility.

The lead biologist will serve as an observer to record incidental take. For consistency, any reactions by pinnipeds to researchers will be recorded according to a three-point scale shown in Table 2. Note that only observations of disturbance noted in Levels 2 and 3 should be recorded as takes.

TABLE 2—LEVELS OF PINNIPED BEHAVIORAL DISTURBANCE

Level	Type of response	Definition
1	Alert	Seal head orientation or brief movement in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, changing from a lying to a sitting position, or brief movement of less than twice the animal's body length.
2*	Movement	Movements in response to the source of disturbance, ranging from short withdrawals at least twice the animal's body length to longer retreats over the beach, or if already moving a change of direction of greater than 90 degrees.
3*	Flush	All retreats (flushes) to the water.

*Only observations of disturbance Levels 2 and 3 are recorded as takes.

This information will be incorporated into a monitoring report for NMFS. The monitoring report will cover the period from January 1, 2019 through December 31, 2019. NMFS has requested that Point Blue submit annual monitoring report data on a calendar year schedule, regardless of the current IHA's initiation or expiration dates. This will ensure that data from all consecutive months will be collected and, therefore, can be analyzed to estimate authorized take for future IHA's regardless of the existing IHA's issuance date. Point Blue will submit a draft monitoring report to NMFS Office of Protected Resources by April 1, 2020. A final report will be prepared and submitted within 30 days following resolution of any comments on the draft report from NMFS. If no comments are received from NMFS, the draft final report will be considered to be the final report. Point Blue will also submit a draft monitoring report covering the period from the Renewal IHA date of issuance through July 6, 2020. This report will be due by October 4, 2020 (90 days after the expiration of the Renewal IHA). A final report will be prepared and submitted within 30 days following resolution of any comments on the draft report from NMFS. If no comments are received from NMFS, the draft final report will be considered to be the final report. The reports must contain the informational elements described above, at minimum.

Point Blue must also report observations of unusual pinniped behaviors, numbers, or distributions and tag-bearing carcasses to the NMFS West Coast Regional Office.

If at any time the specified activity clearly causes the take of a marine mammal in a manner prohibited by this IHA, such as an injury (Level A harassment), serious injury, or mortality, Point Blue will immediately cease the specified activities and report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS. The report must include the following information:

(1) Time and date of the incident;

(2) Description of the incident;

(3) Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);

(4) Description of all marine mammal observations in the 24 hours preceding the incident;

(5) Species identification or description of the animal(s) involved;

(6) Fate of the animal(s); and

(7) Photographs or video footage of the animal(s).

Activities will not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with Point Blue to determine what measures are necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Point Blue may not resume the activities until notified by NMFS.

In the event that an injured or dead marine mammal is discovered and it is determined that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition), Point Blue will immediately report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS. The report must include the same information identified in the paragraph above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with Point Blue to determine whether additional mitigation measures or modifications to the activities are appropriate.

In the event that an injured or dead marine mammal is discovered and it is determined that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Point Blue will report the incident to the Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator, NMFS, within 24 hours of the discovery. Point Blue will provide photographs or video footage or other documentation of the stranded animal sighting to NMFS. Activities may continue while NMFS reviews the circumstances of the incident.

Public Comments

As noted previously, NMFS published a notice of a proposed IHA (83 FR 20045; May 7, 2018) and solicited public comments on both our proposal to issue the initial IHA for seabird research and on the potential for a Renewal, should certain requirements be met.

All public comments were addressed in the notice announcing the issuance of the initial IHA (83 FR 31372; July 5, 2018). Below, we describe how we have addressed, with updated information where appropriate, any comments received that specifically pertain to the Renewal of the 2018 IHA.

Comment: The Marine Mammal Commission (Commission) requested clarification of certain issues associated with NMFS's notice that one-year Renewals can be issued in certain limited circumstances and expressed concern that the process would bypass the public notice and comment requirements. The Commission also suggested that NMFS should discuss the possibility of Renewals through a more general route, such as a rulemaking, instead of notice in a specific authorization. The Commission further recommended that if NMFS did not pursue a more general route, that the agency provide the Commission and the public with a legal analysis supporting our conclusion that this process is consistent with the requirements of section 101(a)(5)(D) of the MMPA.

Response: The notice of the proposed initial IHA expressly notified and invited comment from the public on the possibility that under certain, limited conditions the applicant could seek a Renewal IHA for an additional year. The notice described the conditions under which such a Renewal request could be considered and expressly sought public comment in the event such a Renewal were sought. Further, since issuance of the initial IHA NMFS has modified the Renewal process to provide notice through the **Federal Register** and an additional 15-day public comment period at the time the Renewal IHA is requested. NMFS also provides direct notice of the proposed Renewal to those who commented on the initial IHA, to provide an opportunity to submit any additional comments. Where NMFS inadvertently did not provide direct notice to the Commission here, we are republishing the notice of the proposed Renewal to allow an additional 15 days of public comment (for a total of 60 days) and providing direct notice to the Commission.

We appreciate the Commission's suggestion that NMFS discuss the potential for IHA Renewals through a more general route, such as a rulemaking. However, utilizing the public comment process associated with IHAs is more efficient for the agency, while still providing for appropriate public input into NMFS' decision-making. Further, NMFS's recent modification to the Renewal process (*i.e.,* soliciting additional public comment at the time of a Renewal request) should alleviate the Commission's concern about the lack of additional public comment and need for a more general rulemaking. In addition, where the Commission has also urged NMFS to encourage applicants to apply for incidental take coverage under MMPA section 101(a)(5)(A) for multi-year projects instead of seeking Renewal IHAs, we note that Point Blue has submitted a request for MMPA incidental take regulations and Letters of Authorization, and NMFS has published a Notice of Receipt of Point Blue's request in the **Federal Register** (84 FR 66379; December 4, 2019).

For more information, NMFS has published a description of the Renewal process on our website (available at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals*).

Preliminary Determinations

The seabird research and monitoring activities proposed by Point Blue are identical to those analyzed in the initial IHA, as are the planned number of days of activity, the method of taking, and the effects of the action. The potential effects of Point Blue's activities are limited to Level B harassment in the form of behavioral disturbance. In analyzing the effects of the activity in the initial IHA, NMFS determined that Point Blue's activities would have a negligible impact on the affected species or stocks and that the authorized take numbers of each species or stock were small relative to the relevant stocks (*e.g.,* less than 13 percent of all stocks). The numbers of marine mammals proposed to be taken in this authorization are identical to those authorized in the initial IHA. The mitigation measures and monitoring and reporting requirements as described above are identical to the initial IHA.

NMFS has preliminarily concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. This includes consideration of the estimated abundance of the California sea lion stock decreasing slightly. Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) The required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) Point Blue's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action; and (5) appropriate monitoring and reporting requirements are included.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the West Coast Region Protected Resources Division Office, whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is proposed or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Renewal and Request for Public Comment

As a result of these preliminary determinations, NMFS proposes to issue an IHA Renewal to Point Blue for conducting seabird research activities in Central California, provided the

previously described mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* We request any additional comments on our analyses, the proposed Renewal, and any other aspect of this Notice. Please include with your comments any supporting data or literature citations to help inform our final decision on the request for MMPA authorization.

Dated: December 23, 2019.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–28210 Filed 12–30–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XV163]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) will convene a meeting of its Coastal Pelagic Species Management Team (CPSMT) to discuss issues related to the management of coastal pelagic species (CPS) on the U.S. West Coast. This meeting is open to the public.

DATES: The meeting will be held Tuesday, February 4 through Thursday, February 6, 2020. The meeting will begin at 8:30 a.m. each day and will continue until 5 p.m., or until business for the day has been completed.

ADDRESSES: The meeting will be held in the Buzzelli/Loeb Room in the Scripps Seaside Forum at Scripps Institution of Oceanography, 8622 Kennel Way, La Jolla, CA 92037.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Kerry Griffin, Pacific Council; telephone: (503) 820–2409.

SUPPLEMENTARY INFORMATION: The primary purposes of the meeting are to develop a draft rebuilding plan for the Pacific sardine, develop draft CPS Fishery Management Plan amendatory language, and consider a schedule and timeline for further evaluation of management options for the central subpopulation of northern anchovy, all for Pacific Council consideration at future meetings. Other CPS, administrative, or ecosystem topics may be discussed as well.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kerry Griffin (*kerry.griffin@noaa.gov;* (503) 820–2409) at least 10 days prior to the meeting date.

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

Dated: December 23, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–28200 Filed 12–30–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XV164]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting (webinar).

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Salmon Technical Team (STT) and Scientific and Statistical Committee salmon subcommittee (SSCSC) will hold a joint one-day methodology review meeting. This meeting will be held via webinar and is open to the public.

DATES: The webinar will be held Wednesday, January 22, 2020, from 10:30 a.m. to 12 p.m., or when business for the day has been completed.

ADDRESSES: A public listening station is available at the Pacific Council office (address below). To attend the webinar, use this link: *https://meetings.ringcentral.com/j/5038202410.* Detailed instructions on how to join the webinar through RingCentral will be available on the Pacific Council's website at *www.pcouncil.org.* You may also send an email to Mr. Kris Kleinschmidt at *Kris.Kleinschmidt@noaa.gov* or contact him at (503) 820–2280, extension 412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Robin Ehlke, Pacific Council; telephone: (503) 820–2410.

SUPPLEMENTARY INFORMATION: The purpose of the methodology review meeting is to discuss and review any new or previously provided documentation of the abundance forecast approach used for Willapa Bay natural coho. This meeting is a continuation of the October 22, 2019 STT/SSCSC joint webinar.

Results and recommendations from this methodology review meeting will be presented at the March 2020 Pacific Council meeting in Rohnert Park, CA. If time and interest allow, additional topics may be discussed, including but not limited to future Pacific Council agenda items. Public comments during the webinar will be received from attendees at the discretion of the STT and SSCSC Chairs.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The public listening station is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: December 23, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–28201 Filed 12–30–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XV161]

Fisheries of the Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 65 Pre-Assessment Webinar for highly migratory species Atlantic Blacktip Shark.

SUMMARY: The SEDAR 65 assessment of the Atlantic stock of Blacktip Shark will consist of a series of workshops and webinars: Data Workshop; Assessment Webinars; and a Review workshop.

DATES: The SEDAR 65-Pre-assessment Webinar has been scheduled for Thursday, February 13, 2020, from 12 p.m. until 3 p.m., EST.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Registration is available online at: *https://attendee.gotowebinar.com/register/8955867858539392267.*

SEDAR address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405; *www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: Kathleen Howington, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4366; email: *Kathleen.Howington@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: Data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion at the Pre-Assessment webinar are as follows:

- Introduce and discuss model development, model set up, and follow up questions from the data workshop report.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the South Atlantic Fishery Management Council office (see **ADDRESSES**) at least 5 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: December 23, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–28198 Filed 12–30–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XQ006]

Whaling Provisions; Aboriginal Subsistence Whaling Quotas

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

ACTION: Notice; notification of quota for bowhead whales.

SUMMARY: NMFS notifies the public of the aboriginal subsistence whaling quota for bowhead whales that it has assigned to the Alaska Eskimo Whaling Commission (AEWC), and of limitations on the use of the quota deriving from regulations of the International Whaling Commission (IWC). For 2020, the quota is 93 bowhead whales struck. This quota and other applicable limitations govern the harvest of bowhead whales by members of the AEWC.

DATES: Effective December 31, 2019.

ADDRESSES: Office for International Affairs and Seafood Inspection, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Kristin Rusello, (301) 427–8376.

SUPPLEMENTARY INFORMATION: Aboriginal subsistence whaling in the United States is governed by the Whaling Convention Act (WCA) (16 U.S.C. 916 *et seq.*). Under the WCA, IWC regulations shall generally become effective with respect to all persons and vessels subject to the jurisdiction of the United States, within 90 days of notification from the IWC Secretariat of an amendment to the IWC Schedule (16 U.S.C. 916k). Regulations that implement the WCA, found at 50 CFR 230.6, require the Secretary of Commerce (Secretary) to publish, at least annually, aboriginal subsistence whaling quotas and any other limitations on aboriginal subsistence whaling deriving from regulations of the IWC.

At the 67th Meeting of the IWC, the Commission set catch limits for aboriginal subsistence use of bowhead whales from the Bering-Chukchi-Beaufort Seas stock. The bowhead and

other aboriginal subsistence whaling catch limits were based on a joint request by Denmark on behalf of Greenland, the Russian Federation, St. Vincent and the Grenadines, and the United States, accompanied by documentation concerning the needs of the Native groups.

The IWC set a seven-year block catch limit of 392 bowhead whales landed. For each of the years 2019 through 2025, the number of bowhead whales struck may not exceed 67, with unused strikes from the three prior quota blocks carried forward and added to the annual strike quota of subsequent years, provided that no more than 50 percent of the annual strike limit is added to the strike quota for any one year. At the end of the 2019 harvest, there were 33 unused strikes available for carry-forward, so the combined strike quota set by the IWC for 2020 is 100 (67 + 33).

An arrangement between the United States and the Russian Federation ensures that the total quota of bowhead whales landed and struck in 2020 will not exceed the limits set by the IWC. Under this arrangement, the Russian natives may use no more than seven strikes, and the Alaska natives may use no more than 93 strikes.

Through its cooperative agreement with the AEWC, NOAA has assigned 93 strikes to the Alaska Eskimo Whaling Commission. The AEWC will in turn allocate these strikes among the 11 villages whose cultural and subsistence needs have been documented, and will ensure that its hunters use no more than 93 strikes.

At its 67th Meeting, the IWC also provided for automatic renewal of aboriginal subsistence whaling catch limits under certain circumstances. Commencing in 2026, bowhead whale catch limits shall be extended every six years provided: (a) The IWC Scientific Committee advises in 2024, and every six years thereafter, that such limits will not harm the stock; (b) the Commission does not receive a request from the United States or the Russian Federation for a change in the bowhead whale catch limits based on need; and (c) the Commission determines that the United States and the Russian Federation have complied with the IWC's approved timeline and that the information provided represents a status quo continuation of the hunts.

Other Limitations

The IWC regulations, as well as the NOAA regulation at 50 CFR 230.4(c), forbid the taking of calves or any whale accompanied by a calf.

NOAA regulations (at 50 CFR 230.4) contain a number of other prohibitions relating to aboriginal subsistence whaling, some of which are summarized here:

- Only licensed whaling captains or crew under the control of those captains may engage in whaling;
- Captains and crew must follow the provisions of the relevant cooperative agreement between NOAA and a Native American whaling organization;
- The aboriginal hunters must have adequate crew, supplies, and equipment to engage in an efficient operation;
- Crew may not receive money for participating in the hunt;
- No person may sell or offer for sale whale products from whales taken in the hunt, except for authentic articles of Native American handicrafts; and
- Captains may not continue to whale after the relevant quota is taken, after the season has been closed, or if their licenses have been suspended. They may not engage in whaling in a wasteful manner.

Dated: December 23, 2019.

Alexa Cole,

Director, Office for International Affairs and Seafood Inspection, National Marine Fisheries Service.

[FR Doc. 2019–28205 Filed 12–30–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XR059]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Elkhorn Slough Tidal Marsh Restoration Project, Phase II in California

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from California Department of Fish and Wildlife (CDFW) for authorization to take marine mammals incidental to Elkhorn Slough Tidal Marsh Restoration Project, Phase II in California. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in *Request for Public Comments* at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than January 30, 2020.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP. Bonnie.DeJoseph@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Bonnie DeJoseph, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who

engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment. This proposed action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On August 14, 2019, NMFS received a request from CDFW for an IHA to take marine mammals incidental to Elkhorn Slough Tidal Marsh Restoration Project, Phase II; *e.g.,* using heavy equipment to restore 58 acres of saltmarsh habitat. The application was deemed adequate and complete on November 4, 2019. California Department of Fish and Wildlife's request is for take of a small number of Pacific harbor seals (*Phoca vitulina richardii*) by Level B harassment only. Neither CDFW nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

NMFS previously issued an IHA to CDFW for related work (Phase I of the Elkhorn Slough Tidal Marsh Restoration Project; XRIN 0648–XE687). CDFW complied with all the requirements (*e.g.,* mitigation, monitoring, and reporting) of the previous IHA and information regarding their monitoring results may be found in the Estimated Take section.

This proposed IHA would cover one year of a larger project for which CDFW obtained prior IHAs and intends to request take authorization for subsequent facets of the project. The larger project involves restoring 147 acres of vegetated tidal salt marsh, upland ecotone, and native grasslands in Monterey County. CDFW complied with all the requirements (*e.g.,* mitigation, monitoring, and reporting) of the previous IHA and information regarding their monitoring results may be found in the Estimated Take section.

Description of Proposed Activity

Overview

In response to years of anthropogenic degradation (*e.g.,* diking and marsh draining), the CADFW seeks to restore 147 acres of vegetated tidal salt marsh, upland ecotone, and native grasslands of Elkhorn Slough (Monterey, California). Phase I of the Elkhorn Slough Tidal Marsh Restoration Project, completed in 2018, restored 61 acres of marsh. Phase II aims to restore 58 acres of saltmarsh habitat by using heavy equipment to relocate soil from an upland area, south of the Minhoto-Hester Restoration Area, within an 11 month work period. Construction activities are expected to produce airborne noise and visual disturbance that have the potential to result in behavioral harassment of Pacific harbor seals (*Phoca vitulina richardii*). NMFS is proposing to authorize take, by Level B Harassment, of Pacific harbor seals as a result of the specified activity.

Over the past 150 years, human activities have altered the tidal, freshwater, and sediment processes, which are essential to support and sustain Elkhorn Slough's estuarine habitats. Fifty percent of the tidal salt marsh in the Slough has been lost during this time period. This habitat loss is primarily a result of two historic land use changes, (1) construction of a harbor at the mouth of the Slough and the related diversion of the Salinas River, which lead to increased tidal flooding (and subsequent drowning of vegetation) and (2) past diking and draining of the marsh for use as pasture land. The act of draining wetlands led to sediment compaction and land subsidence, from one to six feet. Decades later, the dikes began to fail, reintroducing tidal waters to the reclaimed wetlands. Rather than converting back to salt marsh, the areas converted to poor quality, high elevation intertidal mudflat, as the lowered landscape was inundated too frequently to support tidal marsh, and insufficient sediment supply was available in the tidal waters to rebuild elevation. The loss of riverine sediment inputs, continued subsidence of marsh areas, sea level rise, increased salinity, and increased nutrient inputs may also contribute to marsh loss (Watson *et al.,* 2011). Bank and channel erosion in the Elkhorn Slough are also leading to deepening and widening tidal creeks, causing salt marshes to collapse into the channel, and eroding sediments that provide important habitat and support estuarine food webs.

The proposed project involves using heavy equipment to raise, excavate, and reposition soil from the borrow area to the remnant marsh plain. It would improve marsh sustainability with sea level rise, as the restored marsh would be higher in the tidal frame, further from the drowning threshold, and marsh vegetation in the restored areas would accrete organic material that would help the restored marsh plain rise with sea level. It would also reduce tidal prism in Elkhorn Slough, reducing the potential for ongoing tidal scour and associated marsh loss. The Minhoto-Hester Restoration Area is key to restoring hydrology to the Phase I restoration area and the Seal Bend Restoration Area is important for both habitat restoration and to maintain the configuration of the main channel of Elkhorn Slough as the remnant levee in the area has almost disintegrated.

Dates and Duration

Construction activities are anticipated to begin in January 2020, after all permits are secured, and take 11 months to complete. Some deviation in timing could result from unforeseen events

such as weather, logistical issues, or mechanical issues with construction equipment. If a break in construction activities does occur, the construction period will be extended by the length of the break without exceeding the one-year window permitted by this IHA. The construction period assumes that the construction contractors would work between sunrise and sunset, Monday through Friday. However, some construction activity may also be required during these times on Saturdays. Due to the nature and location of the proposed work schedule, the potential exposure to Pacific harbor seals would be confined to six of the 11 months (180 days).

Specific Geographic Region

The proposed project is located in the Elkhorn Slough estuary, situated 90 miles south of San Francisco and 20 miles north of Monterey, is one of the largest estuaries in CA, and contains the State's largest salt marshes south of San Francisco Bay (see Figure 1. of the application). Specifically, the project sites are located on land owned and operated by CADFW as part of the Elkhorn Slough Ecological and National Estuarine Research Reserves. The waters of the Elkhorn Slough State Marine Reserve and Monterey Bay National Marine Sanctuary run north of Phase II's project sites in Elkhorn Slough's main channel. Two additional Marine Protected Areas are located within approximately one mile of the project site: Elkhorn Slough State Marine Conservation Area and Moro Cojo Slough State Marine Reserve.

The Elkhorn Slough system is a network of intertidal marshes, mudflats, and subtidal channels located at the center of the Monterey Bay shoreline. With an average depth of 4.6 feet, it is the deepest at the SR 1 bridge overcrossing where it measures 25 feet deep at mean lower low water (MLLW). The main channel in Elkhorn Slough becomes narrower and shallower as it winds inland.

Phase II work would occur within two tidal restoration areas: The Minhoto-Hester Restoration Area (subareas M4a–b, M5, and M6) and the Seal Bend Restoration Area (subareas S1–S4) (see Figure 2 from application), 29.3 and 28.6 acres, respectively. Both are low-lying areas consisting of subsided pickleweed marsh, intertidal mudflats, tidal channels, and remnant levees. The Minhoto-Hester Marsh has multiple cross-levees as well as, natural and dredged channels with a major dredged channel (100+ ft. wide in some locations) that runs north to south through the remnant marsh. Seal Bend has also has been divided by multiple cross-levees, and has the heavily eroded remnants of a perimeter levee along its outboard side. A large borrow channel is located adjacent to the interior of the perimeter levee.

Mixed use lands encompass the slough's boundaries; their activities may influence anticipated behavioral responses and ambient noise levels. To the north are hilly uplands and marine terraces that lie between the Pajaro and Salinas valleys. Upland areas drain into Elkhorn Slough through numerous small ephemeral creeks. The largest of these is Carneros Creek at the head of the estuary. Land use in these uplands consists of agriculture (primarily strawberries and other row crops), cattle grazing, rural residences, and the small town of Las Lomas. Wetlands, mudflats, and marsh areas on both sides of Elkhorn Slough characterize the immediate project setting. Located at the mouth of the bay, a marina and kayak rentals accommodate recreational boaters. Recreational vessels are restricted to the main channel of Elkhorn Slough, just outside the project area. To the south of Elkhorn Slough is an industrial park that comprises a natural gas powered electricity plant and a chemical plant. Southeast of Seal Bend is a dairy farm and further east, south of Yampah Marsh, is a vehicle dismantling and recycling yard. The Union Specific Railroad (UPRR) traverses the reserve, north to south, east of the main channel.

Detailed Description of Specific Activity

Phase II plans to restore 58-acres of saltmarsh habitat, including 53-acres of subsided marsh within the Minhoto-Hester Restoration Area (sub-areas M4a–b, M5, and M6) and the Seal Bend Restoration Area (subareas S1–S4); 2 acres of tidal channels and an additional 3 acres of intertidal salt marsh created at an upland borrow area. To restore hydrologic function to the project area they propose raising the subsided marsh plain, maintaining or re-excavating the existing tidal channels, and excavating within the upland buffer area to restore marsh plain, ecotone, and native grassland habitat.

Up to 276,000 cubic yards (CY) of soil will be obtained from an upland borrow area, south of the Minhoto-Hester Restoration Area (see Figure 2 from the application), to raise the marsh plain elevations to allow emergent wetland vegetation to naturally reestablish and persevere. Sediment would be placed to a fill elevation slightly higher than the target marsh plain elevation permitting settlement and consolidation of the underlying soils. The average fill depth would be 2.1 feet, including 25 percent overfill.

Table 1 (same as Table 1 from the application) below presents the acreages and extents of proposed fill within each marsh sub-area, as well as the volume of fill required for each marsh sub-area to be restored. The upland borrow area, onsite, would be used as the fill source. The project would rely primarily on natural vegetation recruitment in the restored marsh areas.

TABLE 1
VOLUME OF FILL REQUIRED IN EACH SUB-AREA

Subarea	Area (acres)	Fill Area (acres)	Estimated Fill Volume (CY)
Minhoto-Hester Restoration Area			
Sub-area M4a	2.5	1.0	46,880
Sub-area M4b	9.7	7.3	44,516
Sub-area M5	10.2	7.8	57,466
Sub-area H6	6.8	5.5	33,792
Seal Bend Restoration Area			
Sub-area S1	4.8	4.5	32,982
Sub-area S2	8.6	6.4	36,827
Sub-area S3	4.1	3.0	19,021
Sub-area S4	11.1	8.8	44,516
Total Phase II	**57.7**	**44.5**	**276,000**

Source: ESA 2014a

[1] Volumes are mid-range estimates; actual volumes may be higher or lower.

Water Control and Tidal Channels of the Restoration Area

Work areas on the remnant marsh plain would for the most part be isolated from the tides and dewatered to allow work in non-tidal conditions. Water control structures such as temporary berms, constructed without the use of pile driving, would be utilized to isolate the fill placement area during the construction period; note, that while we refer to the work broadly as ''construction,'' no permanent installation of structures is included. Existing berms would be used, where possible, and tidal channels in this area will be blocked. The isolated work areas would be drained using a combination of gravity and pumps. Water levels within the blocked areas would be managed to keep them mostly free of water (with some ponded areas remaining) and to allow fill placement at all stages of the tides. To reduce the potential for fish to become entrained in isolated ponded areas, blocking of tidal channels would occur at low tide. When sediment placement is completed, the berms would be lowered to the target marsh elevation, reintroducing tidal inundation.

Remnant historic channels onsite would generally be left in place or filled and re-excavated in the same place. As needed for marsh access, smaller channels would be filled. Avoidance of channel fill, temporary and permanent, is preferred. As much of the existing tidal channel network would be maintained as is feasible, and the post-project channel alignments would be similar to those under existing conditions. The density of channels (length of channel per acre of marsh) after restoration would be comparable to the density in natural reference marshes. Low levees (less than 0.5 feet above the marsh plain) composed of fill material would be constructed along the larger channels to simulate natural channel levees. Fill would be placed as close to the edge of the channel as possible to simulate the form and function of a natural channel bank. Borrow ditches that date from the times of historical wetland reclamation in these areas would be blocked or filled completely if fill is available after raising the marsh plain. Blocking borrow ditches would route more flow through the natural channels and slightly increase hydraulic resistance, which may achieve benefits from reducing tidal prism and associated scour in the Elkhorn Slough system.

To limit trip distances onto the marsh, the project would employ one or more of the following placement approaches. Temporary channel crossings may be constructed, or tidal channels may be temporarily filled and then re-dug with an excavator or backhoe. If re-excavation of the smaller channels proves infeasible, these channels may be permanently filled, the resulting channel extent consisting of the larger channels only. The resulting channel extent would be sufficient to provide drainage and tidal exchange to support natural marsh functions. The number and locations of channel crossings would depend on the tradeoff between haul distances and the ease of installing and removing the crossings. Where tidal channels were maintained in place, turbidity control measures (*i.e.,* Best Management Practices [BMPs]), such as hay bales or weed free straw wattles) could be staked down in or adjacent to the channels to be preserved. Bulldozers would push fill up to the hay bales and wattles, but not into the channels. Channel crossings and BMPs would be removed at project completion.

Buffer Area

The buffer area would be graded to create an ecotone band along the edge of the restored marsh and/or native grassland habitat (see Figure 2. of the application). Specifically, about three acres of the buffer area would be graded to create intertidal salt marsh and five acres would be revegetated with native dominated perennial grassland adjacent to subareas M4 and M5. The native grassland areas would be revegetated by reducing the weed seed bank and planting native grasses/forbs. A weed-resistant border of rhizomatous perennial plants that readily spreads (*e.g.,* creeping wild rye [*Elymus triticoides*] or Santa Barbara sedge [*Carex barbarae*]) would be planted between the grassland and ecotone. Remaining scraped areas within the borrow area would be planted in a cover crop until local material is propagated to expand grassland restoration.

Construction Sequencing and Equipment

Construction sequencing would begin with water management and/or turbidity control measures constructed around the work areas prior to placing material on the marsh. After fill placement on the marsh, any temporary features, such as water management berms would be removed. Construction equipment would include haul trucks, heavy earthmoving equipment, such as dozers, backhoes, loaders, and excavators to transport dry material out onto the marsh. All heavy equipment used to transport dry material out onto the marsh would be of low ground pressure to prevent sinking in the mud. Mats would be temporarily placed on the marsh, as needed, to spread the weight of the equipment. At the end of construction in each cell/stage, any elevated haul roads and/or berms constructed to aid in material placement would be excavated to design grades, with the resulting earth used to fill adjacent restoration areas.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see *Proposed Mitigation* and *Proposed Monitoring and Reporting*).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments)* and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find*-species).

Table 2 lists all species with expected potential for occurrence in Elkhorn Slough and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2016). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. Marine Mammal SARs: 2015 (Carretta *et al.*). All values presented in Table 2 are the most recent available at the time of publication and are available in the 2018 SARs (Carretta *et al.,* 2018) and draft 2019 SARs (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

TABLE 2—HARBOR SEAL STATUS INFORMATION

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Family Phocidae (earless seals):						
Pacific Harbor Seal	*Phoca vitulina richardii*	California	-;N	30,968 seals (CV = 0.157,N_{min} = 27,348, 2012).	1,641	43

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *www.nmfs.noaa.gov/pr/sars/.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

Note—*Italicized species are not expected to be taken or proposed for authorization.*

As described below, the Pacific harbor seal temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur, and we have proposed authorizing it.

In addition, the Southern sea otter (*Enhydra lutris nereis*) may be found in Elkhorn Slough. However, the Southern sea otter is managed by the U.S. Fish and Wildlife Service and are not considered further in this document.

Local Abundance and Habitat Use

Pacific harbor seals use Elkhorn Slough for hauling out, resting, socializing, foraging, molting, and reproduction, but mainly use it as a staging area for foraging in the Monterey Bay, as there is a limited amount of foraging in the Slough (McCarthy 2010). They are central place foragers, tend to exhibit strong site fidelity within-season and across years, generally forage close to haul-out sites, and may repeatedly visit specific foraging areas (Grigg *et al.,* 2012). Harbor seals inhabit Elkhorn Slough year-round and occur individually or in groups, but their abundance may change seasonally depending on prey availability, molting and reproduction (McCarthy 2010). Molting takes place each summer after pupping, when harbor seals haul out more frequently and for longer periods, than in autumn or winter (Stewart and Yochem 1994).

Counts of harbor seals in the greater Elkhorn Slough began in 1975 and at that time averaged about 30 seals (Harvey *et al.,* 1995, Oxman 1995). The population in the greater Elkhorn Slough is currently estimated at 300 to 500 seals (McCarthy 2010). Harbor seal count data as reported were collected from a variety of sources using various methodologies. Data on harbor seal use near the project area is derived from marine mammal monitoring data collected by the Reserve Otter Monitoring Project (Elkhorn Slough National Estuarine Research Reserve 2018) and Phase I construction monitoring (Fountain *et al.,* 2019).

Harbor seals have utilized the Elkhorn Slough as a resting site since the 1970s, but the first births were not recorded until 1991 (Maldini *et al.,* 2010). From 1995 to 1997, there was a significant annual increase in pups, from 14 seals in 1995 to 29 seals in 1997 (Richman, 1997). The increase of the Elkhorn Slough population and pupping frequency is attributed to a combination of three major factors: Overall increase in abundance leading to increased competition for space and population expansion, migration of young seals to the area, and decreased harassment by humans. Furthermore, marine mammal experts speculate the increase was due to removal of public restrooms from the Seal Bend area in the early 1990s (McCarthy 2010). Pupping can occur throughout the year, but generally starts in late March and peaks in May. Some seals may depart during pupping/breeding season to other breeding areas outside of Elkhorn Slough. Females tend to remove themselves from the group to give birth and return within a week (McCarthy 2010). In 2010, 50 pups were observed in Elkhorn Slough (J. Harvey unpublished data in McCarthy, 2010), but the specific location within the Slough was not documented and the applicant indicates that they have not documented births within the project area.

Seal Haul Outs Potentially Impacted by Project Activities

Harbor seals prefer areas with full tidal exchange; McCarthy (2010) reports them frequenting areas just beyond the mouth of Elkhorn Slough in the Moss Landing harbor and in the Salinas River channel south of the Moss Landing bridge, and the lower portion of Elkhorn Slough extending up to Parsons Slough and Rubis Creek. Figure 3 from the application, depicts known and potential haul-out areas used by harbor seals proximate to the project area. They typically use the corridor from the mouth of Elkhorn Slough through the Moss Landing Harbor entrance for nightly feeding in Monterey Bay (J. Harvey, pers. comm. in McCarthy, 2010). In a diet study conducted between 1995 and 1997, 35 species including topsmelt, white croaker, spotted cusk-eel, night smelt, bocaccio, Pacific herring, a brachyuran crustacean, and 4 genera of mollusks were consumed by harbor seals (Harvey *et al.,* 1995, McCarthy 2010).

For Phase II restoration activities, the ''Seal Bend'' observation area is most representative of seal use at the Seal Bend restoration area; the ''Hester 2'' observation area is most representative of seal use at the Minhoto-Hester restoration area. Other monitoring locations that may support seals that transit or haul out near the proposed Phase II restoration areas and that could be disturbed by construction activities include ''Wildlife'', ''Moon Glow'', ''Upper Dairy (also referred to as ''Main Channel''), ''Yampah'', and ''Avila''. Excluding the haul-outs in the project area during construction would temporarily remove less than 2% of the potential haul-out areas in the slough (*i.e.,* based on similar tidal range).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The *Estimated Take by Incidental Harassment* section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The *Negligible Impact Analysis and Determination* section considers the content of this section, the *Estimated Take by Incidental Harassment* section, and the *Proposed Mitigation* section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Harbor seals that use the haul-out sites Seal Bend and Hester 2, within and near the footprint of the construction areas (as described in the previous section, Description of Marine Mammals in the Area of Specified Activities) may potentially experience behavioral disruption rising to the level of harassment from construction activities. This may include visual disturbance due to the presence and activity of heavy equipment, construction workers, and biological monitors, as well as airborne noise from the equipment. Disturbed seals are likely to experience any or all of these stimuli, and take may occur due to any of these in isolation or in combination with the others.

Construction activities have the potential to cause behavioral harassment to seals that may be hauling out, resting, foraging, or engaging in other activities either inside or near the project area. Human disturbance of harbor seals can strongly affect their abundance and distribution in estuaries. Some or all of the seals present would be expected to move or flush in response to the presence of crew and equipment, though some may remain hauled out. Individuals or groups of seals can experience levels of behavioral disturbance along a continuum of responses: (1) Lifting the head and/or sitting up (alert), (2) movement, or (3) retreating to the water (flushing). The level of human disturbance to seals is dependent on various factors, such as how the site is used by seals, proximity of disturbance (Allen *et al.,* 1984, Osborn 1985, Suryan and Harvey 1999), and duration and frequency of disturbances (Osborn 1985). The impacts of temporary or permanent site abandonment (flight) due to disturbance can include changes in haul-out pattern, which can also affect feeding patterns, and, potentially, reduce pup survival from mother/pup separation and interrupted suckling bouts if disturbance were to occur in longer durations in the vicinity of mother-pup pairs. Tolerance to disturbance may be lower during pupping season (Osborn 1985).

Anthropogenic Airborne Sound Levels

Because of the various activities within and surrounding Elkhorn Slough, as discussed in the *Specific Geographic Region* Section above, resident seals may already be habituated to noise from these established human activities. Noise levels were monitored during a restoration project at Parson's Slough, adjacent to Minhoto-Hester Marsh, in 2010 and 2011. Background noise during that project was approximately 57 dBC L_{max} (dbC can be defined as dB with C-weighting which is a standard weighting of the audible frequencies commonly used for the measurement of Peak Sound Pressure Level [SPL] and L_{max} is defined as the maximum sound level during a single noise event) as measured at 20 and 40 meters northeast of the pile installation site and approximately 1.5 meters above the ground (ESNERR 2011). Approximately 15 to 20 trains pass along the UPRR each day, which is located within 400 feet of the eastern-most portion of the project site (Vinnedge Environmental Consulting 2010). Noise levels from trains were

monitored during construction of the Parson's Slough Project and estimated at 108 dBC $L_{max.}$ Noise is also generated from Pick-n-Pull, a vehicle dismantling yard and recycling yard, located approximately 300 feet from the project site. Lastly, agricultural equipment operated within the existing uplands and haul trucks that travel regularly across adjacent agricultural lands and along nearby levees, also contribute to the ambient noise of Elkhorn Slough.

Although no specific measurements have been made at the project area, it is reasonable to believe that levels may generally be similar to the previous project at Parson's Slough as there is a similar type and degree of activity within the same type of environment (tidal salt marsh). Known sound levels and frequency ranges associated with anthropogenic sources similar to those associated to this project are summarized in Table 3.

TABLE 3—REPRESENTATIVE AIRBORNE SOUND LEVELS OF ANTHROPOGENIC SOURCES—dB re: 20μPa

Sound source	Airborne sound level	Reference
Heavy Earth Moving Equipment (*i.e.,* excavators, backhoes, and front loaders).	80–90 dB at 15.24 m	FHWA, 2015.
UPPR trains	108 dBC L_{max} at 20 m and 40 m (northeast of the pile installation).	ESNERR, 2011 (Parson's Slough).

Airborne noise associated with this project includes noise from construction activities during the restoration of the tidal marsh. Airborne noise produced from earth moving equipment (*i.e.,* backhoes, front end loaders) for construction, may produce sound levels at 80 to 90 dB at 15.24 m (FHWA, 2015) (Table 3). The construction activity may generate noise above ambient levels or create a visual disturbance for a period of 11 months; however, the exact distance of disturbance from noise is unknown. Trains along the UPRR likely generate fairly high noise levels in the eastern portion of the project area, so earth moving equipment operated in this area may not elevate ambient noise levels when trains are present.

Anthropogenic airborne sound could cause hauled out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to move further from the source or temporarily abandon their habitat. Studies by Blackwell *et al.,* (2004) and Moulton *et al.,* (2005) indicate a tolerance or lack of response to unweighted airborne sounds as high as 112 dB peak and 96 dB root mean square (rms).

Due to the nature of the activities, it is unlikely that injurious or lethal takes would occur even in the absence of the planned mitigation and monitoring measures. Further, the proposed mitigation and monitoring measures are expected to minimize the possibility of take by Level A harassment, such that it is not addressed further. During the 9-month construction window associated with Phase I construction, marine mammal monitoring was required and implemented on 89 days (976 hours of monitoring). During this period, there were 19 observed incidents of Level B harassment of harbor seals (flushing or movement) that were recorded by the monitors. Of these, 16 incidents, representing harassment of 62 individual seals, were attributed to construction activity or marine mammal monitoring; the remaining three incidents were unrelated to the project (*e.g.,* seals flushing as a result of a passing boat in Elkhorn Slough) (Table 3 in the application). When Level B harassment occurred, it was always when seals were within 300 meters of the disturbance source; most were when distances were 100 meters or less (Fountain et al. 2019). In addition, not all seals located in the vicinity of the disturbance flushed or moved during each discrete incident; for example, in nine incidents, less than one third of the seals present in the area flushed. Relative to the average number of seals observed per day during monitoring, approximately 2% were disturbed by construction or monitoring activities. Seals that move or flush are expected to use other areas of the slough available as haul out sites.

Changes to Habitat

The primary potential impact to marine mammal habitat associated with the construction activity is the exclusion from the accustomed haul out areas. During the restoration, the inability of seals to use suitable habitat within the footprint of the construction area would temporarily remove less than 2% of the potential haul out areas in Elkhorn Slough. Although the proposed action would permanently alter habitat within the footprint of the construction area, harbor seals haul out in many locations throughout the estuary, and the proposed activities are not expected to have any habitat-related effects that could cause significant or long-term consequences for individual harbor seals or their population. The restoration of the marsh habitat will have no adverse long-term effect on marine mammal habitat, but possibly a long-term beneficial effect on harbor seals by improving ecological function of the slough, inclusive of higher species diversity, increased species abundance, larger fish, and improved habitat.

Harbor seals that use the eastern portion of the Minhoto-Hester Restoration Area (up to 50 seals) would be inhibited from hauling-out or resting within the project area during the 11-month construction period. The site would be isolated outside of the peak-pupping season to avoid impacts to mothers with pups. Non-breeding seals that would have utilized the project area for hauling-out or resting would be displaced. However, seals could use other areas of Elkhorn Slough for resting and haul-out during construction, which would minimize impacts to seals.

Conversion of mudflat back to tidal marsh will have an overall beneficial effect on the Elkhorn Slough system and possibly increase habitat for harbor seals. Harbor seals use a small portion of the channel edges within the subsided marsh (now mudflat). By raising the elevation of the marsh, and increasing the extent of tidal marsh, tidal prism would be reduced and possibly increase the extent of haul-out habitat (McCarthy 2010). This reduction would slow erosion and sediment and marsh loss within the slough system. It is expected to reduce the loss of soft sediment habitat within the slough that support prey species of marine mammals.

Increasing the extent of tidal marsh would also improve water quality by establishing a buffer to absorb upland contaminants and agricultural runoff coming from the Old Salinas River mouth. Improved water quality could increase prey abundance and decrease toxin concentrations in seal tissues resulting in a positive effect on harbor seal abundance and distribution (McCarthy 2010).

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to the stressor/s—pedestrian traffic, biological monitors, construction workers, and use of heavy machinery. Based on the nature of the activity, Level A harassment is neither anticipated nor proposed to be authorized.

As described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water or air that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment). Thresholds have also been developed identifying the received level of in-air sound above which exposed pinnipeds would likely be behaviorally harassed.

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Ellison *et al.,* 2012, Southall *et al.,* 2007). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 microPascal (μPa), (rms) for continuous (*e.g.,* vibratory pile-driving, drilling) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. For in-air sounds, NMFS predicts that harbor seals exposed above received levels of 90 dB re 20 μPa (rms) will be behaviorally harassed, and other pinnipeds will be harassed when exposed above 100 dB re 20 μPa (rms).

CDFW's Elkhorn Slough Tidal Marsh Restoration Project, Phase II includes the use of intermittent (construction activities) airborne noise and visual disturbances, and therefore the 90 dB re 20 μPa (rms) is applicable. We note, however, that the take estimates (described in detail below) are based on occurrence in the general area, rather than within any specific isopleth.

As indicated above, no Level A harassment is anticipated.

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

Data on harbor seal use near the project area is derived from marine mammal monitoring data collected by the Reserve Otter Monitoring Project (ESNERR 2018) and Phase I construction monitoring (Fountain *et al.,* 2019).

The Reserve Otter Monitoring Project has been monitoring otter movement and behavior in Elkhorn Slough since 2011. This effort has been a collaboration between ESNERR, Monterey Bay Aquarium, United State Geologic Survey and University of California Santa Cruz. In January of 2018, they added seals to their observations, and have compiled monitoring data for seals through April 2019. During this time period, biologists conducted weekly monitoring at nine locations along Elkhorn Slough and five locations in Moss Landing Harbor (Figure 4. in the application). Seal and otter counts were completed every Tuesday, every half hour on the hour and half hour, from 10 a.m.–12 p.m. Eight teams were positioned concurrently throughout the estuary using high-powered binoculars and scopes to see otters and seals. Data collected included weather, observation time, tide, the number and species of marine mammal sited, and the location they were observed. All monitoring was completed by or under the supervision of a qualified biologist previously approved by USFWS and NOAA Fisheries for marine mammal monitoring.

Figure 5 (from the application) and Table 4 below, summarizes the maximum number of seals observed by location on a single day of monitoring, June 19, 2018. In addition, the maximum and average number of seals observed during an hourly count at each of the seven monitored locations proximate to the Phase II restoration areas over the 16-month observation period (*i.e.,* January 2018 to April 2019) are presented in Table 4. Since the maximum and average seal counts were collected from various days between January 2018 and April 2019, duplicate counts (*i.e.,* recording the same seal more than once), are considered highly probable. These data are consistent with previous

TABLE 4—HARBOR SEAL COUNTS BY RESERVE OTTER MONITORING PROJECT

Location [1]	Highest daily count [2]	Hourly counts [3]	
		Maximum	Average
Wildlife	88	106	41
Seal Bend	59	86	24
Moonglow	56	87	16
Hester	0	33	5
Main Channel	0	100	30
Yampah	93	81	18
Avila	1	122	32
Total	417	615	166

[1] See Figure 4 (from application) for location of observation area. ''Harbor'' includes incidental counts outside of formal observation areas.
[2] Represents highest count of seals recorded on a single day, June 19, 2018, during hourly counts.
[3] Represents maximum and average number or seals observed during an hourly count at any location from monitoring dates between January 2018 and April 2019 by Reserve Otter Monitoring Project.

population estimates by McCarthy (2010), which estimated the population of seals in Elkhorn Slough at 300 to 500, with seasonal variability based on prey availability, molting and reproduction. The data also illustrate that seals tend to move between areas proximate to each other. For example, when large numbers of seals were observed in Parsons Slough (''Avila'') in the summer of 2018, there was a comparable decline in the number of seals observed at Seal Bend (Figure 5, in the application).

During Phase I construction, marine mammal monitoring was required and implemented on 89 days (976 hours of monitoring) within the 9-month construction window. An average of 75 seals were recorded by marine mammal monitors in the observation area at any given time, and up to 257 individual seals were observed near the Phase I restoration area in a given day. Nineteen incidents of Level B harassment of harbor seals (flushing or movement) were recorded by the monitors. Of these, 16 incidents, representing harassment of 62 individual seals, were attributed to construction activity or marine mammal monitoring; the remaining 3 incidents were unrelated to the project (*e.g.,* seals flushing as a result of a passing boat in Elkhorn Slough) (Table 5). When Level B harassment occurred, it was always when seals were within 300 meters of the disturbance source; most were when distances were 100 meters or less (Fountain *et al.,* 2019). In addition, not all seals located in the vicinity of the disturbance flushed or moved during each discrete incident; for example, in 9 incidents, less than one third of the seals present in the area flushed. Relative to the average number of seals observed per day during monitoring, approximately 2% were disturbed by construction or monitoring activities.

TABLE 5—PHASE I HARBOR SEAL DISTURBANCE DATA—NUMBER OF SEALS EXPERIENCING LEVEL B HARASSMENT (MOVEMENT, FLUSHING) IN RELATION TO NUMBER OF SEALS PRESENT

Incident	Number seals taken	Number seals in vicinity	Number seals in entire observation area
1	12	16	17
2	10	49	75
3	2	2	3
4	1	1	8
5	2	12	31
6	2	12	16
7	2	12	16
8	1	12	16
9	3	3	3
10	4	7	8
11	2	5	36
12	6	43	107
13	2	17	26
14	6	14	31
15	3	3	54
16	4	6	6
Total	62	214	453

Notes:
(1) ''number seals taken'' = seals that moved or flushed.
(2) ''Number seals in vicinity'' = o those proximate to the disturbance site.

Specific to the presence of pups during Phase I, Table 6 depicts the maximum number of pups observed during hourly counts by month. This metric conservatively represents the highest number of pups that could be disturbed by project-related activities (including by monitoring observers) at a given time.

TABLE 6—MAXIMUM NUMBER OF PUPS OBSERVED DURING HOURLY COUNTS BY MONTH DURING PHASE I CONSTRUCTION

Month	Number of pups
2017:	
December	5
2018:	
January	6
February	9
March	4
April	7
May	15
June	5
July	9
August	9

Table 7 summarizes all occasions where monitors observed seal pups reacting to Phase I project-related activities— typically sound. All responses were observed within 100m of project-related activities. This metric conservatively represents the highest number of pups that could be disturbed by project-related activities, either a monitor or construction activities (typically sound), at a given time.

TABLE 7—PHASE I HARBOR SEAL PUP DISTURBANCE DATA

Date	Reaction	Trigger	Total number seals present	Total number seals reacted [1]	Number pups reacted
4/11/18	Flush	Monitor (Visual)	18	6	3
4/11/18	Flush	Construction (Sound)	12	2	1
4/11/18	Flush	Construction (Sound)	10	2	1
4/11/18	Flush	Construction (Sound)	10	2	1
4/12/18	Alert	Construction (Sound and Visual)	17	2	1
5/01/18	Flush	Monitor (Visual)	3	3	1

[1] Includes all seals (adults, pups) that reacted to project-related disturbance.

No takes by Level A harassment, serious injury, or mortality are expected from the disturbance associated with the construction activities. It is unlikely a stampede (a potentially dangerous occurrence in which large numbers of animals succumb to mass panic and rush away from a stimulus) would occur or abandonment of pups. The primary spots used for nursing and resting for mother/pup pairs has been the entrance to Parson Slough, which is ~610 m east of Minhoto-Hester restoration area and will not be affected by construction activities (*per comm* Harvey 2019). Pacific harbor seals have been hauling out in the project area and within the greater Elkhorn Slough throughout the year for many years (including during pupping season and while females are pregnant) while being exposed to anthropogenic sound sources such as recreational vessel traffic, UPPR, and other stimuli from human presence. The number of harbor seals disturbed would likely also fluctuate depending on time day and tidal stage. Fewer harbor seals will be present in the early morning and approaching evening hours as seals leave the haul out site to feed and they are also not present when the tide is high and the haul out is inundated.

Take Calculation and Estimates

Here we describe how the information provided above is brought together to produce a quantitative take estimate.

Incidental take is calculated using the estimated number of seals that will be present in project area during construction activities and the anticipated percentage of those seals that will be taken based on previous monitoring. Expected marine mammal presence is determined by past observations—from Phase I of the restoration project and 16 months of data from the Reserve Otter Monitoring Project—and general abundance during the construction window. Daily take estimates are based on the average percentage of Level B disturbance observed during Phase 1 construction (percent of seals taken) in the following equation:

$$\text{Average Percentage of Seals Taken} = \frac{\text{Total Number Of Seals Taken in Phase I}}{\text{Sum of the Average Number of Seals Observed in Phase I}}$$

The percentage was then rounded up to 2% and used to calculate the daily take estimate. Upon review of CDFW's take calculation and estimate, NMFS decided to calculate the daily take estimate using the maximum number of seals observed in a day (417) at the seven locations, proximate to the Phase II restoration areas, over a 16-month period by the Reserve Otter Monitoring Project:

Daily Take Estimate = Average % of Seals Taken * Maximum Seals Observed in a Day

The proposed authorized take was determined by multiplying the daily take estimate (8.34) by the number of construction days (180), for Phase II of the restoration project. Using this approach, a summary of estimated takes of harbor seals incidental the project activities are provided in Table 8. Estimates include Level B harassment as a result of exposure to noise and visual disturbance during construction activities.

TABLE 8—CALCULATED TAKE AND PERCENTAGE OF STOCK EXPOSED

Species	Proposed authorized take		% population [4]
	Level B	Level A	
A. Pacific Harbor Seal	417 [1] max seals/day(2% [2])(180 days [3]) = 1502	N/A	5

[1] Maximum number of seals observed/day between January 2018 and April 2019 by Reserve Otter Monitoring Project.
[2] % Take from Phase I.
[3] Number of construction days.
[4] Data from U.S. Pacific Marine Mammal Stock Assessments: 2015 (Carretta *et al.,* 2015).

All estimates proposed by the applicant and accepted by NMFS, are considered conservative. Construction activities will occur in sections, and some sections (*e.g.* S1–S4) are further away from seal haul outs (approximately 100 m and greater). Noise from construction activities in more southern sections may cause fewer disturbances to seals. Not all seals that previously used the haul outs within the footprint of the construction will use the haul outs just outside the project. Some seals may seek alternative haul out habitat in other parts of Elkhorn Slough.

Proposed Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

The following mitigation measures are planned in the IHA:

Timing Restrictions

All work will be conducted during daylight hours when visual monitoring of marine mammals can be implemented. If poor environmental conditions restrict full visibility of the shutdown zone, construction activities would be delayed. No in-water work will be conducted at night.

Shutdown Zone for In-Water Heavy Machinery Work

For in-water, heavy machinery work, if a marine mammal comes within 10 m of such operations, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions.

Construction Activities

A NOAA Fisheries and USFWS-approved biologist shall conduct mandatory biological resources awareness training for construction personnel. The awareness training shall be provided to all construction personnel to brief them on the need to avoid effects on marine mammals. If new construction personnel are added to the project, the contractor shall ensure that the personnel receive the mandatory training before starting work.

A NOAA Fisheries and USFWS approved biological monitor will monitor for marine mammal disturbance. Monitoring will occur at all times when work is occurring, (1) in water or (2); within 100 m of tidal waters. Biological monitoring will begin 0.5-hour before work begins and will continue until 0.5-hour after work is completed each day. The biological monitor will have the authority to stop project activities if marine mammals approach or enter the exclusion zone and/or at any time for the safety of any marine mammals. Work will commence only with approval of the biological monitor to ensure that no marine mammals are present in the exclusion zone.

To reduce the risk of potentially startling marine mammals with a sudden intensive sound, the construction contractor would begin construction activities gradually each day by moving around the project area and starting tractor one at a time.

Fuel storage and all fueling and equipment maintenance activities will be conducted at least 100 feet from subtidal and intertidal habitat.

Pupping Season

While CADFW expects the majority of pupping to take place at Parson's Slough, outside of the project area, pupping location is left to the mother's preference. Thus, in the event a pup comes within 20 m of where heavy machinery is operating, construction activities in that area will be delayed until the pup has left the area. In the event that a pup remains within those 20 m, NMFS will be consulted to determine the appropriate course of action.

If a pup less than one week old comes within 20 meters of where heavy machinery is working, construction activities in that area would be delayed until the pup has left the area. In the event that a pup less than one week old remains within those 20 meters, NOAA Fisheries would be consulted to determine the appropriate course of action.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries,

mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).
- Mitigation and monitoring effectiveness.

Pre-Activity Monitoring

Pre and post construction daily censuses—A census of marine mammals in the project area and the area surrounding the project will be conducted 30 minutes prior to the beginning of construction on monitoring days, and again 30 minutes after the completion of construction activities. The following data will be collected:

- Environmental conditions (weather condition, tidal conditions, visibility, cloud cover, air temperature and wind speed), recorded during pre- and post-construction daily census counts
- Numbers of each species spotted
- Location of each species spotted
- Status (in water or hauled out)
- Behavior

Hourly counts—Conduct hourly counts of animals hauled out and in the water.

Data collected will include:

- Numbers of each species
- Location, including zone and whether hauled out or in the water
- Time
- Tidal conditions
- Primary construction activities occurring during the past hour
- Number of mom/pup pairs and neonates observed
- Notable behaviors, including foraging, grooming, resting, aggression, mating activity, and others
- Tag color and tag location (and tag number if possible)—for sea otters, note right or left flipper and location between digits (digits 1 and 2 are inside; digits 4 and 5 are outside)

Notes may include any of the following information to the extent it is feasible to record:

- Age-class
- Sex
- Unusual activity or signs of stress
- Any other information worth noting

Construction related reactions

Record reaction observed in relation to construction activities including:

- Time of reaction
- Concurrent construction activity
- Location of animal during initial reaction and distance from the noted disturbance
- Activity before and after disturbance
- Status (in water or hauled out) before and after disturbance

TABLE 9—CODE REACTIONS

Level	Type of response	Definition
1	Alert	Seal head orientation or brief movement in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, changing from a lying to a sitting position, or brief movement of less than twice the animal's body length. Alerts will be recorded, but not counted as a 'take'.
2	Movement	Movements away from the source of disturbance, ranging from short withdrawals at least twice the animal's body length to longer retreats, or if already moving a change of direction of greater than 90 degrees. These movements will be recorded and counted as a 'take'.
3	Flush	All retreats (flushes) to the water. Flushing into the water will be recorded and counted as a 'take'.

Steps for Shutting Down and Resuming Construction

1. Alert construction foreman of animal using the red flag and handheld radio (use 1 blow from air horn if needed)
2. Record the construction activity and the time of shutdown
3. Record the reaction and location of the animal
4. Give clearance signal (green flag) and handheld radio for construction activities when animal is seen outside of 10-meter zone and traveling away from the construction area, or when the animal is not spotted for 15 minutes
5. Record the time construction resumes

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to

considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

Construction activities associated with this project have the potential to disturb or displace marine mammals. No serious injury or mortality is expected, and with mitigation we expect to avoid any potential for Level A harassment as a result of the Seal Bend and Minhoto-Hester Marsh construction activities. The specified activities may result in take, in the form of Level B harassment (behavioral disturbance) only, from visual disturbance and/or noise from construction activities. The project area is within a portion of the local habitat for harbor seals of the greater Elkhorn Slough and seals are present year-round. Behavioral disturbances that could result from anthropogenic sound or visual disturbance associated with these activities are expected to affect only a small amount of the total population (*i.e.,* likely maximum of 250 seals), although those effects could be recurring over the life of the project if the same individuals remain in the project vicinity. Harbor seals may avoid the area or halt any behaviors (*e.g.,* resting) when exposed to anthropogenic noise or visual disturbance. Due to the abundance of suitable haul out habitat available in the greater Elkhorn Slough, the short-term displacement of resting harbor seals is not expected to affect the overall fitness of any individual animal.

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as displacement from the area or disturbance during resting. The construction activities analyzed here are similar to, or less impactful than for Parson's Slough (and other projects), which have taken place with no reported injuries or mortality to marine mammals, and no known long-term adverse consequences from behavioral harassment. Repeated exposures of individuals to levels of noise or visual disturbance at these levels, though they may cause Level B harassment, are unlikely to result in hearing impairment or to significantly disrupt foraging behavior. Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (*i.e.,* 24 hour cycle). Behavioral reactions (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). However, Pacific harbor seals have been hauling out at Elkhorn Slough during the year for many years (including during pupping season and while females are pregnant) while being exposed to anthropogenic sound and visual sources such as vessel traffic, UPRR trains, and human voices from kayaking. Harbor seals have repeatedly hauled out to rest (inside and outside the project area) or pup (outside of the project area) despite these potential stressors. The activities are not expected to result in the alteration of reproductive or feeding behaviors. It is not likely that neonates will be in the project area as females prefer to keep their pups along the main channel of Elkhorn Slough, which is outside the area expected to be impacted by project activities. Seals are primarily foraging outside of Elkhorn Slough and at night in Monterey Bay, outside the project area, and during times when construction activities are not occurring.

Pacific harbor seals, as the potentially affected marine mammal species under NMFS jurisdiction in the action area, are not listed as threatened or endangered under the ESA and NMFS SARs for this stock have shown that the population is increasing and is considered stable (Carretta *et al.,* 2016). Even repeated Level B harassment of some small subset of the overall stock is unlikely to result in any significant realized decrease in viability for the affected individuals, and thus will not result in any adverse impact to the stock as a whole. The restoration of the marsh habitat will have no adverse effect on marine mammal habitat, but possibly a long-term beneficial effect on harbor seals by improving ecological function of the slough, inclusive of higher species diversity, increased species abundance, larger fish, and improved habitat.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized.
- No Level A harassment is anticipated or authorized.
- Anticipated incidents of Level B harassment consist of, at worst, temporary modifications in behavior.
- Primary foraging and reproductive habitat are outside of the project area and the construction activities are not expected to result in the alteration of habitat important to these behaviors or substantially impact the behaviors themselves. There is alternative haul out habitat just outside the footprint of the construction area, along the main channel of Elkhorn Slough, and in Parson's Slough, preferred in recent years for pupping (*per comm* Harvey 2019), that will be available for seals while some of the haul outs are inaccessible.
- Restoration of the marsh habitat will have no adverse effect on marine mammal habitat, but possibly a long-term beneficial effect.
- Presumed efficacy of the mitigation measures in reducing the effects of the specified activity to the level of least practicable impact
- These stocks are not listed under the ESA or considered depleted under the MMPA. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activities will have only short-term effects on a relatively small portion of the entire California stock (five percent). The specified activities are not expected to impact rates of recruitment or survival and will therefore not result in population-level impacts.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Sections 101(a)(5)(A) and (D) of

the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Here, the authorized take (if we conservatively assumed that each take occurred to a new animal, which is unlikely) comprises approximately five percent of the abundance of harbor seals. Therefore, based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has preliminarily determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to CDFW for conducting Phase II of the Elkhorn Slough Tidal Marsh Restoration Project in Elkhorn Slough located in Monterey County, CA over 11 months, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this Notice of Proposed IHA for the proposed [action]. We also request at this time comment on the potential renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent Renewal.

On a case-by-case basis, NMFS may issue a one-year IHA renewal with an additional 15 days for public comments when (1) another year of identical or nearly identical activities as described in the Specified Activities section of this notice is planned or (2) the activities as described in the Specified Activities section of this notice would not be completed by the time the IHA expires and a Renewal would allow for completion of the activities beyond that described in the Dates and Duration section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to expiration of the current IHA.
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested Renewal are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take because only a subset of the initially analyzed activities remain to be completed under the Renewal).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

- Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: December 23, 2019.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–28211 Filed 12–30–19; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XR045]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Whittier Ferry Terminal Alaska Class Ferry Modification Project

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

ACTION: Notice; issuance of incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to the Alaska Department of Transportation and Public Facilities to incidentally harass, by Level B harassment only, marine mammals during construction activities associated with the Whittier Ferry Terminal ACF Modification project in Whittier, AK.

DATES: This Authorization is effective from February 1, 2020 to January 31, 2021.

FOR FURTHER INFORMATION CONTACT: Leah Davis, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon

request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On June 6, 2019, NMFS received a request from Alaska Department of Transportation and Public Facilities (ADOT&PF) for an IHA to take marine mammals incidental to the relocation of one dolphin at the Whittier Ferry Terminal in Whittier, Alaska. The application was deemed adequate and complete on September 27, 2019. ADOT&PF's request is for take of a small number of five species of marine mammals by Level B harassment. Neither ADOT&PF nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of the Specified Activity

ADOT&PF is seeking an IHA for ferry terminal modifications at the Whittier Ferry terminal in Whittier, AK. Whitter is located at the head of Passage Canal, a deep-water fjord within Prince William Sound. The project includes relocation of one dolphin to accommodate a new, Alaska Class Ferry, the M/V Hubbard, as it is wider than the ferries currently operating in Prince William Sound. The dolphin will be removed using a vibratory hammer, and reinstalled using both vibratory and impact hammers. Additionally, construction will include modifying the existing catwalk and landing and modifying the bridge girder connection. Pile removal and installation associated with the project are expected to result in Level B harassment of humpback whale, killer whale, Dall's porpoise, Steller sea lion, and harbor seal. The ensonified area is expected to reach 12.0 km beyond the project site in Passage Canal. In-water construction is expected to occur over six workdays during February and March 2020, however the IHA will be effective from February 2020 to January 2021.

A detailed description of the planned project is provided in the **Federal Register** notification for the proposed IHA (84 FR 56427; October 22, 2019). Since that time, no changes have been made to the planned construction activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notification for the description of the specific activity.

Comments and Responses

A notification of NMFS's proposal to issue an IHA to ADOT&PF was published in the **Federal Register** on October 22, 2019 (84 FR 56427). That notification described, in detail, ADOT&PF's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30-day public comment period, NMFS received comments from the Marine Mammal Commission; the Commission's recommendations and our responses are provided here.

Comment 1: The Commission recommends that NMFS update its various templates for **Federal Register** notifications and draft authorizations and conduct a more thorough review of the applications and **Federal Register** notifications to ensure accuracy, completeness, and consistency prior to submitting them to the **Federal Register** for public comment.

Response: NMFS thanks the Commission for its recommendation. NMFS makes every effort to keep templates up-to-date and read notifications thoroughly prior to publication and will continue this effort to publish the best possible product for public comment.

Comment 2: The Commission recommends that NMFS authorize at least four Level A harassment takes of harbor seals based on impact driving of four piles. While the shutdown zone includes the entire Level A harassment zone for harbor seals, harbor seals could pop up into the Level A harassment zone before activities can shut down. In that instance, the Commission asserts that a sighting should be recorded as a Level A harassment take, as a Protected Species Observer (PSO) cannot determine the amount of time that the animal was within the Level A harassment zone undetected, nor its location while it was underwater.

Response: During impact pile driving, the shutdown zone for harbor seals (200m) encompasses the entire Level A harassment zone for harbor seals (195m). While it is possible that a harbor seal may pop up in the shutdown zone before a shutdown can be implemented, it is unlikely that the animal would have been exposed to pile driving noise for a long enough duration to cause Level A harassment, given the duration component. Therefore, we have not authorized Level A harassment takes of harbor seals.

Additionally, as noted in the mitigation and monitoring requirements, PSOs are required to record and report all observed instances of marine mammals, including the distance from pile driving activity to the animal. Therefore, if a harbor seal is observed within 200m of the shutdown zone, it will be included in the monitoring report along with the estimated distance from pile driving activity. However, as noted above, it is not expected that the animal would have been taken by Level A harassment, and it would not be considered an unauthorized Level A harassment take.

Comment 3: The Commission recommended that NMFS increase the number of Level B harassment takes of Steller sea lions from 15 takes to 30 takes based on five animals potentially occurring in the Level B harassment zone on each of the six days of activities.

Response: As described in the **Federal Register** notification for the proposed IHA (84 FR 56427; October 22, 2019), as many as ten sea lions haul out year-round on a channel buoy within Shotgun Cove approximately 6 km (3.7 mi) northeast of the project location (M. Bender, Lazy Otter Charters, pers. comm.; M. Kopec, Whittier Marine Charters, pers. comm.). The Level B harassment zone does extend past Shotgun cove, however, due to the features of the shoreline, the Level B harassment zone is clipped on the Shotgun Cove side of Passage canal. It does not include the area of Passage Canal directly outside of Shotgun Cove (see application for more information), therefore animals do not have to enter the Level B harassment zone to exit Shotgun Cove and travel toward Prince William Sound. Given the limited prey

availability in the project area in February and March, as described in the **Federal Register** notification for the proposed IHA (84 FR 56427), NMFS believes that Level B harassment takes of Steller sea lion are not likely to occur. However, 15 Level B harassment takes are being authorized at the request of the applicant to ensure MMPA coverage, should they occur.

Comment 4: The Commission recommends that NMFS require ADOT&PF to implement shutdown zones of 375m for low-frequency cetaceans and 450m for high-frequency cetaceans.

Response: During impact pile driving, the Level A harassment zone for low-frequency cetaceans is 364.3m. During informal discussion with the Commission on the Draft IHA, NMFS expected to include a shutdown zone of 350m for low-frequency cetaceans, which NMFS believed to be sufficient to prevent Level A harassment. Due to the duration component associated with the Level A harassment zones, NMFS did not expect that a low-frequency cetacean would remain in the Level A harassment zone for a long enough period, without being detected and triggering a shutdown, to be taken by Level A harassment, given a shutdown zone of 350m. However, in the final Authorization, NMFS is requiring a 550-meter shutdown zone during impact pile driving. The shutdown zone is much larger than the Level A harassment zone, however, NMFS previously concluded informal Section 7 consultation with the Alaska Region with the understanding that the shutdown zone would include the area within the 550m isopleth. For vibratory pile driving, the shutdown zone for low-frequency cetaceans will be 25m, while the Level A harassment zone is 26m.

During impact pile driving, the Level A harassment zone for high-frequency cetaceans is 433.9m. NMFS is requiring a 400m shutdown zone for high-frequency cetaceans. As previously discussed for low-frequency cetaceans, due to the duration component associated with the Level A harassment zones, NMFS does not expect that a high-frequency cetacean would remain in the Level A harassment zone for a long enough period, without being detected and triggering a shutdown, to be taken by Level A harassment.

Comment 5: The Commission recommends that NMFS ensure that ADOT&PF keep a running tally of the *total* takes, which includes extrapolated takes, for each species to comply with section 4(g) of the authorization.

Response: NMFS agrees that ADOT&PF must ensure they do not exceed authorized takes. We have included in the authorization that ADOT&PF must include extrapolation of the estimated takes by Level B harassment based on the number of observed exposures within the Level B harassment zone and the percentage of the Level B harassment zone that was not visible in the draft and final reports.

Comment 6: The Commission recommends that NMFS refrain from using the proposed renewal process for ADOT&PF's authorization. The Commission states that the renewal process should be used sparingly and selectively, by limiting its use only to those proposed incidental harassment authorizations that are expected to have the lowest levels of impacts to marine mammals and that require the least complex analyses.

The Commission states that if NMFS intends to use the renewal process frequently *or* for authorizations that require a more complex review or for which much new information has been generated (*e.g.,* multiple or extensive monitoring reports), it recommends that NMFS provide the Commission and other reviewers the full 30-day comment opportunity set forth in section 101(a)(5)(D)(iii) of the MMPA.

Response: We appreciate the Commission's input and direct the reader to our recent response to a similar comment, which can be found at 84 FR 52464 (October 2, 2019).

Changes From the Proposed IHA to Final IHA

The sizes of the Level A harassment zones decreased between the proposed IHA and the final IHA. In the proposed IHA, NMFS used the average number of piles per day (1.5 piles) and a sound source level based on SPL RMS (and assumed 100msec pulse duration for impact pile driving) to estimate Level A harassment zones for pile driving activities. In the Final IHA, NMFS used the maximum number of piles per day (2 piles) and a sound source level based on a single-strike sound exposure level (for impact pile driving only), as recommended by the Commission. Additionally, shutdown zone sizes have been modified based on informal correspondence with the Commission and NMFS's Alaska Regional Office. After a shutdown, activities may not resume until either the animal has been visually confirmed beyond the shutdown zone or 15 minutes (pinnipeds)/30 minutes (cetaceans) have passed without subsequent detections of the animal. The proposed authorization stated that activities may resume after the animal has been visually confirmed beyond the shutdown zone, or 15 minutes have passed without subsequent detections for all species. See the *Mitigation Measures* section for additional information. Also suggested by the Commission, the monitoring zone associated with vibratory pile driving and removal was decreased to reflect concerns that PSOs would not be able to view the farthest extents of the proposed 12km monitoring zone. Finally, 60 Level B harassment takes of harbor seal are authorized, rather than the 15 Level B harassment takes of harbor seal originally proposed for authorization, as a result of informal correspondence with the Commission.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species*).

Table 1 lists all species with expected potential for occurrence in Passage Canal and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2016). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprise that stock. For some species, this geographic area may

extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. Alaska and U.S. Pacific SARs (*e.g.,* Muto *et al.,* 2019). All values presented in Table 1 are the most recent available at the time of publication and are available in the 2018 SARs or 2019 draft SARs (Carretta *et al.,* 2019 and Muto *et al.,* 2019).

TABLE 1—MARINE MAMMALS THAT COULD OCCUR IN THE PROJECT AREA

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae:						
Gray whale	*Eschrichtius robustus*	Eastern North Pacific	-, -, N	26,960 (0.05, 25,849, 2016).	801	139
Family Balaenopteridae (rorquals):						
Fin whale	*Balaenoptera physalus*	Northeast Pacific	E, D, Y	see SAR (see SAR, see SAR, 2013).	5.1	0.6
Humpback whale	*Megaptera novaeangilae*	Central North Pacific	-, -, Y	10,103 (0.300, 7,891, 2006).	83	26
		California/Oregon/Washington	-, -, Y	2,900 (0.05, 2,784, 2014)	16.7	≥40.2
		Western North Pacific	E, D, Y	1,107 (0.300, 865, 2006)	3	3.0
Minke whale	*Balaenoptera acutorostra*	Alaska	-, -, N	N/A (see SAR, N/A, see SAR).	Undet	0
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Killer whale	*Orcinus orca*	Eastern North Pacific, Alaska Resident.	-, -, N	2,347c (N/A, 2,347, 2012).	24	1
		Gulf, Aleutian, Bering Transient	-, -, N	587c (N/A, 587, 2012)	5.87	1
		AT1 Transient	-, D, Y	7c (N/A, 7, 2017)	0.01	0
Pacific white-sided dolphin	*Lagenorhynchus obliquidens*	North Pacific	-, -, N	26,880 (Unknown, Unknown, 1990).	Undet	0
Family Phocoenidae (porpoises):						
Dall's porpoise	*Phocoenoides dalli*	Alaska	-, -, N	83,400 (0.097, N/A, 1991).	Undet	38
Harbor porpoise	*Phocoena*	Gulf of Alaska	-, -, Y	31,046 (0.214, N/A, 1998).	Undet	72
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California sea lion	*Zalophus californianus*	U.S.	-, -, N	257,606 (N.A, 233,515, 2014).	14,011	≥321
Steller sea lion	*Eumetopias jubatus*	Western U.S.	E, D, Y	53,624a (Unknown, 53,624, 2018).	322	247
Family Phocidae (earless seals):						
Pacific harbor seal	*Phoca vitulina*	Prince William Sound	-, -, N	44,756 (see SAR, 41,776, 2015).	1,253	413

1—Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

2—NMFS marine mammal stock assessment reports online at: *www.nmfs.noaa.gov/pr/sars/.* CV is coefficient of variation; Nmin is the minimum estimate of stock abundance. For certain stocks of pinnipeds, abundance estimates are based upon observations of animals (often pups) ashore multiplied by some correction factor derived from knowledge of the species (or similar species) life history to arrive at a best abundance estimate; therefore, there is no associated CV. In these cases, the minimum abundance may represent actual counts of all animals ashore.

3—These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

Note: Italicized species are not expected to be taken or proposed for authorization.

All species that could potentially occur in the project area are included in Table 1. However, the temporal and/or spatial occurrence of gray whale, fin whale, minke whale, Pacific white-sided dolphin, harbor porpoise, and California sea lion are such that take is not expected to occur, and they are not discussed further beyond the explanation provided here. Gray whales do not regularly enter Prince William Sound, and charter operators have only observed gray whales in Passage Canal twice in the past 20 years (M. Bender, Lazy Otter Charters, pers. comm.; M. Kopec, Whittier Marine Charters, pers. comm.). Fin whales typically arrive to the Gulf of Alaska in May, well after the February and March work window, and there is only one record of a fin whale occurring within Passage Canal in the past 20 years (M. Kopec, Whittier Marine Charters, pers. comm.). Minke whales are not expected to occur in the ensonified area, as in the past 20 years, marine mammal charter operators have seen fewer than five minke whales within Passage Canal, and they are typically found farther south during winter months (NMFS 2018b). Extensive marine mammal surveys conducted within Prince William Sound by Hall (1979) and Waite (2003) yielded no sightings of Pacific white-sided dolphins. Based on habitat preferences and past survey results, this dolphin is unlikely to occur in the Action Area, especially given the early spring work-window. Over the last 20 years, none

have been observed in the inlet by charter operators (M. Bender, Lazy Otter Charters, pers. comm.; M. Kopec, Whittier Marine Charters, pers. comm.). Harbor porpoise have not been observed in Passage Canal during over two decades of whale watching by one charter operator (M. Bender, Lazy Otter Charters, pers. comm.), and are considered extremely rare in Passage Canal by another (M. Kopec, Whittier Marine Charters, pers. comm.). California sea lions are rarely sighted in southern Alaska. NMFS' anecdotal sighting database includes four sightings in Seward and Kachemak Bay, and they were also documented during the Apache 2012 seismic survey in Cook Inlet. However, California sea lions have not been observed in Passage Canal.

In addition, the northern sea otter may be found in Whittier, AK. However, northern sea otters are managed by the U.S. Fish and Wildlife Service and are not considered further in this document.

A detailed description of the species likely to be affected by the Whittier Ferry Terminal ACF Modification project, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notification for the proposed IHA (84 FR 56427; October 22, 2019); since that time, the Draft 2019 Stock Assessment Reports have been published, which include changes for the Prince William Sound stock of harbor seals and the western stock of Steller sea lion. However, take estimates are still based on the information on presence in Passage Canal, such as expected group size, outlined in the **Federal Register** notification for the proposed IHA (84 FR 56427; October 22, 2019); therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notification for these descriptions. Please also refer to NMFS' website (*https://www.fisheries.noaa.gov/find-species*) for generalized species accounts.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

Underwater noise from impact and vibratory pile driving activities associated with the project have the potential to result in harassment of marine mammals in the vicinity of the action area. The **Federal Register** notification for the proposed IHA (84 FR 56427; October 22, 2019) included a discussion of the potential effects of such disturbances on marine mammals and their habitat, therefore that information is not repeated in detail here; please refer to the **Federal Register** notification (84 FR 56427; October 22, 2019) for that information.

Estimated Take

This section provides an estimate of the number of incidental takes for authorization through this IHA, which will inform both NMFS's consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to pile driving and removal activities. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.,* shutdown zones) discussed in detail below in the Mitigation Measures section, Level A harassment is not authorized. As described previously, no mortality is anticipated or authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 microPascal (μPa) root mean square (rms) for continuous (*e.g.,* vibratory pile-driving, drilling) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources.

ADOT&PF's activity includes the use of continuous (vibratory pile driving and removal) and impulsive (impact pile driving) sources, and therefore the 120 and 160 dB re 1 μPa (rms) thresholds are applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (NMFS, 2018a) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). ADOT&PF's activity includes the use of impulsive (impact pile driving) and non-impulsive (vibratory pile driving and removal) sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/*

marine-mammal-acoustic-technical-guidance.

TABLE 2—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT (PTS)

Hearing group	PTS onset acoustic thresholds * (received Level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa²s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the project. Marine mammals are expected to be affected via sound generated by the primary components of the project (*i.e.,* impact pile driving, vibratory pile driving and removal). The maximum (underwater) area ensonified above the thresholds for behavioral harassment referenced above is 20.5 km² (7.9 mi²) and is governed by the inlet topography.

The project includes vibratory and impact pile installation of steel pipe piles and vibratory removal of steel pipe piles. Source levels of pile installation and removal activities are based on reviews of measurements of the same or similar types and dimensions of piles available in the literature. Source levels for each pile size and driving method are presented in Table 3. The vibratory and impact source levels for 30-inch (0.76m) pile installation is from pile driving activities at the Auke Bay Ferry Terminal in November 2015 (Denes *et al.,* 2016). Source levels for vibratory installation and removal of piles of the same diameter are assumed to be the same.

TABLE 3—SOUND SOURCE LEVELS FOR PILE DRIVING METHODS

Pile size and method	Source level (SPL at 10m)			Literature source
	dB RMS	dB SEL [a]	dB peak	
30-inch Vibratory	168.0	N/A	N/A	Denes *et al.* 2016.
30-inch Impact	191.3	177.4	206.0	Denes *et al.* 2016.

[a] Sound exposure level (dB re 1 μPa²-sec).

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B * Log_{10} (R_1/R_2),$$

Where:

TL = transmission loss in dB

B = transmission loss coefficient

R_1 = the distance of the modeled SPL from the driven pile, and

R_2 = the distance from the driven pile of the initial measurement

Absent site-specific acoustical monitoring with differing measured transmission loss, a practical spreading value of 15 is used as the transmission loss coefficient in the above formula. Site-specific transmission loss data for Whittier are not available; therefore, the default coefficient of 15 is used to determine the distances to the Level A and Level B harassment thresholds.

TABLE 4—PILE DRIVING SOURCE LEVELS AND DISTANCES TO LEVEL B HARASSMENT THRESHOLDS

Pile size and method	Source level at 10m (dB re 1 μPa rms)	Level B threshold (dB re 1 μPa rms)	Propagation (xLogR)	Distance to Level B threshold (km)	Level B harassment ensonified area (km²)
30-inch Vibratory	168.0	120	15	15.85	20.5
30-inch Impact	191.3	160	15	1.221	1.24

When the NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources such as pile driving, NMFS User Spreadsheet predicts the distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would incur PTS. Inputs used in the User Spreadsheet, and the resulting isopleths are reported below.

TABLE 5—USER SPREADSHEET INPUT PARAMETERS USED FOR CALCULATING LEVEL A HARASSMENT ISOPLETHS

Pile size and installation method	30-inch pile vibratory installation and removal	30-inch pile impact installation (SEL_{cum})	30-inch pile impact installation (PK)
Spreadsheet Tab Used	(A.1) Vibratory pile driving	(E.1) Impact pile driving	(E.1) Impact pile driving.
Weighting Factor Adjustment (kHz)	2.5	2	2.
Source Level (@10m)	168.0 dB RMS SPL	177.4 dB	206 dB.
Number of piles within 24-h period	2	2.	
Duration to drive a single pile (minutes)	45.		
Strike Duration (seconds).			
Number of strikes per pile		400.	
Activity Duration (seconds) within 24-h period	5400.		
Propagation (xLogR)	15	15.	
Distance from source level measurement (meters)	10	10	10.

TABLE 6—CALCULATED DISTANCES TO LEVEL A HARASSMENT ISOPLETHS

Activity	Level A harassment zone (m)				
	Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocid pinnipeds	Otariid pinnipeds
30-inch Pile Vibratory Installation and Removal	26.2	2.3	38.8	15.9	1.1
30-inch Pile Impact Installation (SEL_{cum})	364.3	13.0	433.9	195.0	14.2
30-inch Pile Impact Installation (PK)	1	NA	19	2	N/A

Marine Mammal Occurrence and Take Calculation and Estimation

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations. No systematic surveys for marine mammals have occurred in Passage Canal. Animal presence is based on the observations by whale watching charters based out of Whittier, which specifically search for marine mammals in Passage Canal and one of which operates during the February and March construction window.

Here we describe how the information provided above is brought together to produce a quantitative take estimate. Because reliable densities are not available and marine mammal presence in Passage Canal is minimal, take requests are species specific and a general take calculation formula does not apply. All take estimates remain the same as in the proposed IHA, except for harbor seals which have been increased in the final IHA.

Humpback Whale

Based on over two decades of whale watching activity in Passage Canal, humpback whales have been observed in Passage Canal on only very rare occasions and remained for very short periods (M. Bender, Lazy Otter Charters, pers. comm.). Reported occurrence is approximately once per year (M. Kopec, Whittier Marine Charters, pers. comm.).

ADOT&PF estimated that one humpback whale (Straley *et al.,* 2018) may enter Passage Canal and remain in the Canal for several days during the project if herring are present. Therefore, NMFS has authorized take of one whale for each of the six project days for a total of six humpback whale takes.

The largest Level A harassment zone for humpback whales extends 364.3m from the source during impact installation of 30-inch (0.76m) piles (Table 6). The SEL_{cum} Level A harassment zone includes a time component, and we do not expect humpback whales to remain in the area within 364.3m during impact pile driving for long enough to experience Level A harassment. Therefore, Level A harassment takes of humpback whales were not requested and are not authorized.

Killer Whale

On rare occasions killer whales have been reported to make brief sorties into Passage Canal, but they are not regular residents there (M. Bender, Lazy Otter Charters, pers. comm.). They are seen in the inlet approximately once each year (M. Kopec, Whittier Marine Charters, pers. comm.). ADOT&PF estimates that one pod may enter the Level B harassment zone during the project. Based on that estimate, NMFS has authorized 20 killer whale takes, which equates to the largest, single pod (AB) entering the project area on one day of pile driving.

The largest Level A harassment zone for killer whales extends 13m from the source during impact installation of 30-inch (0.76m) piles (Table 6). Given the irregular and small presence of killer whales in Passage Canal, and the fact

that PSOs are expected to detect killer whales before they enter the Level A harassment zone and implement shutdown zones to prevent take by Level A harassment, Level A harassment takes of killer whales have not been requested and are not authorized.

Dall's Porpoise

Dall's porpoises have occasionally been observed near the entrance of Passage Canal, but within the inlet they are considered exceedingly rare (M. Bender, Lazy Otter Charters, pers. comm.; M. Kopec, Whittier Marine Charters, pers. comm.). NMFS has authorized take of five Dall's porpoise, based on the springtime average group size (4.59 individuals) from Prince William Sound surveys conducted by Moran *et al.* (2018). The estimate assumes that one group enters the Level B harassment zone on one day of pile driving.

The largest SEL_{cum} Level A harassment zone for Dall's porpoise extends 433.9m from the source during impact installation of 30-inch (0.76m) piles (Table 6), while the Peak Level A harassment zone for the same activity is 19m (Table 6). As noted in Table 8, a 400-m shutdown zone will be implemented for Dall's porpoises. The SEL_{cum} Level A harassment zone includes a time component, however, we do not expect Dall's porpoises to remain in the area within 433.9m during impact pile driving for a long enough period to experience Level A harassment. Therefore, takes of Dall's porpoises by Level A harassment were not requested and are not authorized.

Steller Sea Lion

Steller sea lions are often seen near Whittier during May to August salmon runs but are irregularly seen in the Action Area the rest of the year, although as many as ten sea lions haul out year-round on a channel buoy within Shotgun Cove approximately 6 km (3.7 mi) northeast of the Action Area (M. Bender, Lazy Otter Charters, pers. comm.; M. Kopec, Whittier Marine Charters, pers. comm.).

An average of five Steller sea lions haul out on the buoy in Shotgun Cove. ADOT&PF estimates that half of those animals (average of 2.5) may enter the Level B harassment zone on each of the six days of pile driving, and requested 15 Level B harassment takes of Steller sea lions. Due to the limited prey availability in the project area in February and March (Bishop and Green 2009, NMFS 2019), NMFS acknowledges that the requested Level B harassment takes are unlikely to occur. However, the takes were analyzed and are being authorized at the request of the applicant to ensure MMPA coverage should they occur in the ensonified zone during the specified activities.

The largest Level A harassment zone for otariid pinnipeds extends 14.2m from the source during impact installation of 30-inch (0.76m) piles (Table 6). ADOT&PF will implement a minimum 25-m shutdown zone during all pile installation and removal activities (see Mitigation Measures section), which is expected to eliminate the potential for Level A harassment take of Steller sea lions. Therefore, takes of Steller sea lions by Level A harassment were not requested and are not authorized.

Harbor Seal

Harbor seal use of the project area is occasional and sporadic. If food is available, small numbers of harbor seals may remain for extended periods in the Whittier boat harbors feeding on sessile invertebrates growing on harbor pilings. Otherwise, they are only occasionally seen in the mid-inlet, although sightings do occur year-round. Recently, four to ten seals (typically about five) have been observed hauling out on a rock pinnacle in Logging Camp Bay located 12.4 km (7.7 mi) east of the project area, just outside of the Level B harassment zone (M. Bender, Lazy Otter Charters, pers. comm.). In the proposed authorization, ADOT&PF assumed that on any given day, half (2.5 average) of these seals might occur in the Level B harassment zone during each of the six days of pile driving, and therefore requested 15 Level B harassment takes of harbor seals. However, during informal correspondence, the Commission suggested that all ten seals have the potential to enter the Level B harassment zone and be taken on each of the six days of pile driving. NMFS agrees, and is authorizing 60 Level B harassment takes of harbor seals.

The largest SEL_{cum} Level A harassment zone for phocid pinnipeds extends 195m from the source during impact installation of 30-inch (0.76m) piles (Table 6), while the Peak Level A harassment zone for the same activity is 1.6m (Table 6). ADOT&PF is planning to implement a 25-m shutdown zone during vibratory pile installation and removal activities and a 200-m shutdown zone during impact pile installation for phocid pinnipeds (Table 8). These shutdown zones are expected to eliminate the potential for Level A harassment take of harbor seals. Therefore, takes of harbor seals by Level A harassment were not requested and are not authorized.

TABLE 7—AUTHORIZED TAKE BY LEVEL B HARASSMENT ONLY, BY SPECIES AND STOCK

Common name	Stock	Stock abundance [a]	Level B take	Authorized take as percentage of stock
Humpback whale	Central North Pacific	10,103	[b] 6	0.06
Killer whale	Eastern North Pacific, Alaska Resident	2,347	20	0.85
	Gulf, Aleutian, Bering Transient	587	20	3.41
Dall's porpoise	Alaska	83,400	5	0.01
Steller sea lion	Western U.S.	53,624	15	0.03
Harbor seal	Prince William Sound	44,756	[c] 60	0.13

[a] Stock or DPS size is Nbest according to NMFS 2018 SARs or 2019 Draft SARs.
[b] For ESA Section 7 consultation purposes, 89% of humpbacks in the project area are designated to the Hawaii DPS. Therefore, this individual humpback whale is expected to be from the Hawaii DPS, as are all authorized humpback whale takes.
[c] Updated based on informal correspondence with the Commission.

Mitigation Measures

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for

certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned); and,

(2) the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

In addition to the measures described later in this section, ADOT&PF will employ the following standard mitigation measures:

- Conduct briefings between construction supervisors and crews and the marine mammal monitoring team prior to the start of all pile driving activity, and when new personnel join the work, to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures;
- For in-water heavy machinery work other than pile driving (*e.g.,* standard barges, *etc.*), if a marine mammal comes within 10 m, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions. This type of work could include the following activities: (1) Movement of the barge to the pile location; or (2) positioning of the pile on the substrate via a crane (*i.e.,* stabbing the pile);
- To minimize impacts from vessel interactions with marine mammals, the crew aboard project vessels (tugs, barges, and monitoring vessels) will follow NMFS's marine mammal viewing guidelines and regulations as practicable;
- Work may only occur during daylight hours, when visual monitoring of marine mammals can be conducted;
- For those marine mammals for which Level B harassment take has not been requested, in-water pile installation/removal will shut down immediately if such species are observed within or on a path towards the monitoring zone (*i.e.,* Level B harassment zone); and
- If take reaches the authorized limit for an authorized species, pile installation will be stopped as these species approach the Level B harassment zone to avoid additional take.

The following mitigation measures would apply to ADOT&PF's in-water construction activities:

Establishment of Shutdown Zone for Level A Harassment—For all pile driving/removal and drilling activities, ADOT&PF will establish a shutdown zone. The purpose of a shutdown zone is generally to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones will vary based on the activity type and marine mammal hearing group (see Table 8). The largest shutdown zones are generally for low frequency and high frequency cetaceans as shown in Table 8. The placement of Protected Species Observers (PSOs) during all pile driving and pile removal activities (described in detail in the Monitoring and Reporting Section) will ensure that the entire shutdown zone is visible during pile installation.

TABLE 8—SHUTDOWN ZONES DURING PILE INSTALLATION AND REMOVAL

Activity	Shutdown zone (m)				
	LF cetaceans	MF cetaceans	HF cetaceans	Phocids	Otariids
Vibratory pile installation and removal	25	25	50	25	10
Impact pile installation	550	25	400	200	25

Establishment of Monitoring Zones for Level B Harassment—ADOT&PF would establish monitoring zones to correlate with Level B harassment zones or zones of influence which are areas where SPLs are equal to or exceed the 160 dB rms threshold for impact driving and the 120 dB rms threshold during vibratory driving and drilling. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project area outside the shutdown zone and thus prepare for a potential cease of activity should the animal enter the shutdown zone. Placement of PSOs on the shorelines around Passage Canal allow PSOs to observe marine mammals within Passage Canal. As noted by the Commission, PSOs will not be able to observe the entire Level B harassment zone during all activities. Therefore, Level B harassment takes will be recorded and extrapolated based upon the number of observed taked and the percentage of the Level B harassment zone that was not visible.

TABLE 9—MARINE MAMMAL MONITORING ZONES

Activity	Monitoring zone (m)
Vibratory pile installation and removal	[a] 9,000
Impact pile installation	1,200

[a] Maximum distance that PSOs will be able to monitor. The monitored area will depend on the number of PSOs and how close animals are to the opposite side of Passage Canal from the observer.

Soft Start—The use of soft-start procedures are believed to provide additional protection to marine

mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors would be required to provide an initial set of strikes from the hammer at reduced energy, with each strike followed by a 30-second waiting period. This procedure would be conducted a total of three times before impact pile driving begins. Soft start would be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of thirty minutes or longer. Soft start is not required during vibratory pile driving and removal activities.

Pre-Activity Monitoring—Prior to the start of daily in-water construction activity, or whenever a break in pile driving/removal or drilling of 30 minutes or longer occurs, PSOs will observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone will be cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zone, a soft-start cannot proceed until the animal has left the zone or has not been observed for 15 minutes (for pinnipeds) or 30 minutes (for cetaceans). If the Level B harassment zone has been observed for 30 minutes and no species for which take is not authorized are present within the zone, soft start procedures can commence and work can continue even if visibility becomes impaired within the Level B harassment monitoring zone. When a marine mammal for which Level B harassment take is authorized is present in the Level B harassment zone, activities may begin and Level B harassment take will be recorded. As stated above, if the entire Level B harassment zone is not visible at the start of construction, pile driving activities can begin. If work ceases for more than 30 minutes, the pre-activity monitoring of both the Level B harassment and shutdown zones will commence.

Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

Visual Monitoring

Monitoring would be conducted 30 minutes before, during, and 30 minutes after pile driving/removal activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than thirty minutes.

There will be at least two PSOs employed during all pile driving/removal activities. PSO will not perform duties for more than 12 hours in a 24-hour period. For impact and vibratory pile driving and removal, one PSO would be positioned at the end of the terminal catwalk near the pile driving/removal activities at the best practical vantage point. A second PSO would be stationed approximately 2.5 km down Shotgun Cove Road and Trail. For vibratory pile driving and removal, two additional PSOs will be stationed along Shotgun Cove Road and Trail, each approximately 2.5 km down the trail from the previous PSO. Observed take will be extrapolated across unobserved portions of the Level B harassment zone.

If Station 2 is not accessible via snowmobile on Shotgun Cove Road and Trail, a vessel will be used as a monitoring station. The vessel will be mostly stationary, however, it will be somewhat influenced by the tides. If Stations 3 or 4 are not accessible via snowmobile on Shotgun Cove Road and Trail, take observed by PSOs at Stations 1 and 2 will be extrapolated across the unobserved portion of the project area.

As part of monitoring, PSOs would scan the waters using binoculars, and/or spotting scopes, and would use a handheld GPS or range-finder device to verify the distance to each sighting from the project site. All PSOs would be trained in marine mammal identification and behaviors and are required to have no other project-related tasks while conducting monitoring. In addition, monitoring will be conducted by qualified observers who will be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator. Qualified observers are trained and/or experienced professionals, with the following minimum qualifications:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;
- Independent observers (*i.e.,* not construction personnel);
- Observers must have their CVs/resumes submitted to and approved by NMFS;
- Advanced education in biological science or related field (*i.e.,* undergraduate degree or higher). Observers may substitute education or training for experience;
- Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience);
- At least one observer must have prior experience working as an observer;
- Experience or training in the field identification of marine mammals,

including the identification of behaviors;

• Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;

• Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and

• Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

Reporting

A draft marine mammal monitoring report would be submitted to NMFS within 90 days after the completion of pile driving and removal activities. The report will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

• Date and time that monitored activity begins or ends;

• Construction activities occurring during each observation period;

• Weather parameters (*e.g.,* percent cover, visibility);

• Water conditions (*e.g.,* sea state, tide state);

• Species, numbers, and, if possible, sex and age class of marine mammals;

• Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;

• Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;

• Locations of all marine mammal observations;

• An estimate of total take based on proportion of the monitoring zone that was observed; and

• Other human activity in the area.

If no comments are received from NMFS within 30 days, the draft final report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury, serious injury or mortality, ADOT&PF would immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinator. The report would include the following information:

• Description of the incident;

• Environmental conditions (*e.g.,* Beaufort sea state, visibility);

• Description of all marine mammal observations in the 24 hours preceding the incident;

• Species identification or description of the animal(s) involved;

• Fate of the animal(s); and

• Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the prohibited take. NMFS would work with ADOT&PF to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. ADOT&PF would not be able to resume their activities until notified by NMFS via letter, email, or telephone.

In the event that ADOT&PF discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition as described in the next paragraph), ADOT&PF would immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS Alaska Stranding Hotline and/or by email to the Alaska Regional Stranding Coordinator. The report would include the same information identified in the paragraph above. Activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with ADOT&PF to determine whether modifications in the activities are appropriate.

In the event that ADOT&PF discovers an injured or dead marine mammal and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), ADOT&PF would report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS Alaska Stranding Hotline and/or by email to the Alaska Regional Stranding Coordinator, within 24 hours of the discovery. ADOT&PF would provide photographs, video footage (if available), or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

Pile driving installation and removal activities associated with the project as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment, from underwater sounds generated from pile driving and removal. Potential takes could occur if individuals of these species are present in zones ensonified above the thresholds for Level B harassment identified above when these activities are underway.

The takes from Level B harassment would be due to potential behavioral disturbance. No Level A harassment is anticipated given the nature of the activity and measures designed to

minimize the possibility of injury to marine mammals. The potential for Level A harassment and the scale and intensity of Level B harassment are minimized through the construction method and the implementation of the planned mitigation measures (see Mitigation Measures section).

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff 2006; HDR, Inc. 2012; Lerma 2014; ABR 2016). Most likely for pile driving, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile driving and drilling, although even this reaction has been observed primarily only in association with impact pile driving. Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein and, if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activity is occurring. While vibratory driving associated with the project may produce sound at distances of many kilometers from the project site, thus intruding on some habitat, the ensonified area is already less-preferred habitat when the project is not underway. Therefore, we expect that animals annoyed by project sound would simply avoid the area and use more-preferred habitats.

The project is also not expected to have significant adverse effects on affected marine mammals' habitats. The project activities would not modify existing marine mammal habitat for a significant amount of time. The activities may cause some fish to leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities and the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality is anticipated or authorized;
- No injury is anticipated or authorized;
- Any resulting Level B harassment is expected to be short-term and of relatively low impact;
- In fact, nearby habitat is considered non-optimal given the low likelihood of many known prey resources during the months of the activity;
- The area impacted by the specified activity is very small relative to the overall habitat ranges of all species;
- The project area does not include ESA-designated critical habitat and does not overlap with any Biologically Important Areas (BIAs);
- The project is only taking place over six total pile driving/removal days;
- The project has the potential to impact less than 3.5 percent of each impacted stock; and
- The mitigation measures are expected to reduce the effects of the specified activity to the level of least practicable adverse impact.

In addition, although affected Steller sea lions are from a DPS that is listed under the ESA, it is unlikely that minor noise effects in a small, localized area of habitat would have any effect on the stocks' ability to recover. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activities will have only minor, short-term effects on individuals. The specified activities are not expected to impact rates of recruitment or survival and will therefore not result in population-level impacts.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the monitoring and mitigation measures, NMFS finds that the total marine mammal take from the activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Table 7 demonstrates the number of animals that could be exposed to received noise levels that could cause Level B harassment for the work in Whittier. Our analysis shows that less than 1 percent of most affected stocks could be taken by Level B harassment, with the exception of the Gulf of Alaska, Aleutian Islands, and Bering Sea Transient stock of killer whales, for which less than 3.5 percent of the stock could be taken. The numbers of animals authorized to be taken for these stocks would be considered small relative to the relevant stock's abundances even if each estimated taking occurred to a new individual, which is an extremely unlikely scenario.

Based on the analysis contained herein of the activity (including the mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

In order to issue an IHA, NMFS must find that the specified activity will not have an ''unmitigable adverse impact'' on the subsistence uses of the affected marine mammal species or stocks by Alaskan Natives. NMFS has defined ''unmitigable adverse impact'' in 50 CFR 216.103 as an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

Hunters from two native villages—Chenega Bay and Tatitlek—and native hunters living in Cordova annually harvest marine mammals within Prince William Sound as part of a subsistence lifestyle (Fall and Zimpelman 2016). Chenega Bay hunters annually harvest a few harbor seals and sea otters and have hunted Steller sea lions in the past (Wolfe et al. 2009). Most hunting occurs locally. Hunters from Tatitlek harvest harbor seals and sea lions over most of central Prince William Sound, although their hunting range does not extend to Passage Canal (Fall and Zimpelman 2016). Native hunters living in Cordova mostly harvest harbor seals but

occasionally take sea otters and sea lions (Fall and Zimpelman 2016). All villages are greater than 100 km (62 mi) by boat travel from Passage Canal. The short-term, relatively low-impact, Level B harassment takes resulting from construction activities associated with the Whittier Ferry Terminal modifications project will have no impact on the ability of hunters from these villages to harvest marine mammals. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the Alaska Region, Protected Resource Division Office, whenever we propose to authorize take for endangered or threatened species.

NMFS is authorizing take of western stock Steller sea lions under the MMPA. For purposes of the Endangered Species Act, the NMFS Permits and Conservation Division has determined that while this action may affect western DPS Steller sea lions, it is not likely to adversely affect the DPS because we do not expect Steller sea lions to use habitats near Whittier during the season when construction will occur. On December 4, 2019, per section 7 of the ESA, the NMFS Alaska Region concurred that the proposed action may affect, but is not likely to adversely affect, the western distinct population segment (DPS) of Steller sea lions (*Eumetopias jubatus*) or the Mexico or Western North Pacific DPSs of humpback whale (*Megaptera novaeangliae*).

Authorization

NMFS has issued an IHA to ADOT&PF for the incidental take of marine mammals due to in-water construction work associated with the Whittier Ferry Terminal ACF Modification project in Whittier, AK from February 1, 2020 to January 31, 2021, provided the previously mentioned mitigation, monitoring and reporting requirements are incorporated.

Dated: December 23, 2019.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–28213 Filed 12–30–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XV165]

Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 62 Assessment Webinar VII for Gulf of Mexico gray triggerfish.

SUMMARY: The SEDAR 62 stock assessment process for Gulf of Mexico gray triggerfish will consist of an In-person Workshop, and a series of data and assessment webinars. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 62 Assessment Webinar VI will be held February 3, 2020, from 2 p.m. to 4 p.m., Eastern Time.

ADDRESSES: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop, (2) a series of assessment webinars, and (3) A Review Workshop. The product of the Data Workshop is a report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The assessment webinars produce a report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The product of the Review Workshop is an Assessment Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion during the Assessment Webinar are as follows:

1. Using datasets and initial assessment analysis recommended from the in-person workshop, panelists will employ assessment models to evaluate stock status, estimate population benchmarks and management criteria, and project future conditions.

2. Participants will recommend the most appropriate methods and configurations for determining stock status and estimating population parameters.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: December 23, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–28202 Filed 12–30–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Department of the Air Force

Notice of Federal Advisory Committee Meeting

AGENCY: Department of the Air Force, U.S. Air Force Scientific Advisory Board.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that the following Federal Advisory Committee meeting of the U.S. Air Force Scientific Advisory Board will take place.

DATES: Closed to the public. Wednesday January 15, 2020 from 8:15 a.m. to 9:15 a.m.

ADDRESSES: Beckman Center of The National Academies of Science and Engineering, located at 100 Academy Drive, Irvine, California 92617.

FOR FURTHER INFORMATION CONTACT: Evan Buschmann, (240) 612–5503 (Voice), 703–693–5643 (Facsimile), *evan.g.buschmann.civ@us.af.mil* (Email). Mailing address is 1500 West Perimeter Road, Ste. #3300, Joint Base Andrews, MD 20762. Website: *http://www.sab.af.mil/.* The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The purpose of this Air Force Scientific Advisory Board quarterly meeting is to provide dedicated time for members to begin collaboration on research and formally commence the Air Force Scientific Advisory Board's FY20 Secretary of the Air Force directed studies. The Air Force Scientific Advisory Board will deliberate on and finalize the FY20 Air Force Research Laboratory Science & Technology Review's Integrated Outbrief. In accordance with section 10(d) of the Federal Advisory Committee Act, as amended, 5 U.S.C. Appendix and 41 CFR 102–3.155, the Administrative Assistant of the Air Force, in consultation with the Air Force General Counsel, has agreed that the public interest requires the United States Air Force Scientific Advisory Board meeting be closed to the public because it will involve discussions involving classified matters covered by 5 U.S.C. 552b(c)(1).

Written Statements: Any member of the public wishing to provide input to the United States Air Force Scientific Advisory Board should submit a written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act and the procedures described in this paragraph. Written statements can be submitted to the Designated Federal Officer at the address detailed above at any time. Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed below at least five calendar days prior to the meeting, which is the subject of this notice. Written statements received after this date may not be provided to or considered by the United States Air Force Scientific Advisory Board until its next meeting. The Designated Federal Officer will review all timely submissions with the United States Air Force Scientific Advisory Board Chairperson and ensure they are provided to members of the United States Air Force Scientific Advisory Board before the meeting that is the subject of this notice.

Adriane Paris,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2019–28196 Filed 12–30–19; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 18–45]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Karma Job at *karma.d.job.civ@mail.mil* or (703) 697–8976.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 18–45 with attached Policy Justification and Sensitivity of Technology.

Dated: December 23, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

NOV 16 2018

The Honorable Paul D. Ryan
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 18-45, concerning the Air Force's proposed Letter(s) of Offer and Acceptance to the Government of Japan for defense articles and services estimated to cost $63 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001–06–C

Transmittal No. 18-45

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser*: Government of Japan

(ii) *Total Estimated Value*:

Major Defense Equipment * ..	$60 million
Other	$ 3 million
TOTAL	$63 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase*:

Major Defense Equipment (MDE): Thirty-two (32) AIM-120C-7 Advanced Medium Range Air-to-Air Missiles (AMRAAM)

Non-MDE: Also included are containers, weapon support and support equipment, spare and repair parts, U.S. Government and contractor engineering, technical and logistical support services, and other related elements of logistical and program support.

(iv) *Military Department*: Air Force (JA-D-YAO)

(v) *Prior Related Cases, if any*: JA-D-YAK, JA-D-YAI, JA-D-YAH

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid*: None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold*: See Attached Annex

(viii) *Date Report Delivered to Congress*: November 16, 2018

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Japan—AIM-120C-7 Advanced Medium-Range Air-to-Air Missiles (AMRAAM)

The Government of Japan has requested to buy thirty-two (32) AIM-120C-7 Advanced Medium Range Air-to-Air Missiles (AMRAAM). Also included are containers, weapon support and support equipment, spare and repair parts, U.S. Government and contractor engineering, technical and logistical support services, and other related elements of logistical and program support. The total estimated program cost is $63 million.

This proposed sale will contribute to the foreign policy and national security of the United States. Japan is one of the major political and economic powers in East Asia and the Western Pacific and is a key partner of the United States in ensuring peace and stability in that region. It is vital to U.S. national interests to assist Japan in developing and maintaining a strong and effective self-defense capability.

The proposed sale of these missiles will provide Japan a critical air defense capability to assist in defending the Japanese homeland and U.S. personnel stationed there. Japan will have no difficulty absorbing these additional missiles into its armed forces.

The proposed sale of this equipment and support does not alter the basic military balance in the region.

The principal contractor will be Raytheon Missile Systems of Tucson, Arizona.

There are no known offset agreements proposed in connection with this potential sale. Any offset agreement will be defined in negotiations between the Purchaser and the prime contractor.

Implementation of this proposed sale will not require the assignment of additional U.S. Government or contractor personnel in Japan.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 18-45

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology*:

1. The AIM-120C-7 Advance Medium Range Air-to-Air Missile (AMRAAM) is a radar guided missile featuring digital technology and micro-miniature solid-state electronics. AMRAAM capabilities include look-down/shoot-down, multiple launches against multiple targets, resistance to electronic countermeasures, and interception of high flying, low flying, and maneuvering targets. The AMRAAM All Up Round is classified CONFIDENTIAL. The major components and subsystems are classified from UNCLASSIFIED to CONFIDENTIAL, and technology data and other documentation are classified up to SECRET.

2. If a technologically advanced adversary obtained knowledge of the specific hardware or software in the proposed sale, the information could be used to develop counter-measures which might reduce weapons system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that Japan can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

4. All defense articles and services listed in this transmittal have been authorized for release and export to Japan.

[FR Doc. 2019–28195 Filed 12–30–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 20–0A]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Karma Job at *karma.d.job.civ@mail.mil* or (703) 697–8976.

SUPPLEMENTARY INFORMATION: This 36(b)(5)(C) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 20–0A with attached Policy Justification and Sensitivity of Technology.

Dated: December 23, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

DEC 04 2019

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended, we are forwarding Transmittal No. 20-0A. This notification relates to enhancements or upgrades from the level of sensitivity of technology or capability described in the Section 36(b)(1) AECA certification 08-60 of August 1, 2008.

Sincerely,

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:
1. Transmittal

BILLING CODE 5001–06–C

Transmittal No. 20-0A

REPORT OF ENHANCEMENT OR UPGRADE OF SENSITIVITY OF TECHNOLOGY OR CAPABILITY (SEC. 36(B)(5)(C), AECA)

(i) *Purchaser*: Government of Italy
(ii) *Sec. 36(b)(1), AECA Transmittal No.*: 08-60
Date: August 1, 2008
Military Department: Air Force

(iii) *Description*: On August 1, 2008, Congress was notified by Congressional certification transmittal number 08-60 of the possible sale, under Section 36(b)(1) of the Arms Export Control Act, of 4 MQ-9 Unmanned Aerial Vehicles (UAV), 3 Mobile Ground Control Stations, five years of maintenance support, engineering support, test equipment, ground support, operational flight test support, communications equipment, technical assistance, personnel training/equipment, spare and repair parts, and other related elements of logistics support. These UAVs included AN/DPY-1 Synthetic Aperture Radar/Ground Moving Target Indicator (SAR/GMTI) systems with 0.3 to 3 meter resolution. The estimated total cost was $330 million. Major Defense Equipment (MDE) constituted $50 million of this total.

On November 18, 2009, Congress was notified by Congressional certification transmittal number 09-60 of the possible sale, under Section 36(b)(1) of the Arms Export Control Act, of two unarmed MQ-9 Unmanned Aerial Vehicles (UAVs), one (1) Mobile Ground Control Station, maintenance support, engineering support, test equipment, ground support, operational flight test support, communications equipment, technical assistance, personnel training/equipment, spare and repair parts, and other related elements of logistics support. These UAVs included AN/DPY-1 Synthetic Aperture Radar/Ground Moving Target Indicator (SAR/GMTI) systems with 0.1 to 3 meter resolution. The estimated total cost was $63 million. MDE constituted $36 million of this total.

On December 17, 2009, Congress was notified by Congressional certification transmittal number 0C-09 of the possible sale, under Section 36(b)(5)(a) of the Arms Export Control Act, of a performance upgrade of the AN/DPY-1 SAR/GMTI systems aboard the four MQ-9s UAVs previously notified on transmittal 08-60 from 0.3 to 3 meter resolution to the same 0.1 to 3 meter resolution of the two MQ-9s notified on transmittal 09-60. There was no increase in cost of MDE for this upgrade.

This transmittal reports the addition of Major Defense Equipment items beyond what was originally notified to include:

1. Retrofit of five (5) existing MQ-9A Block 1 Unmanned Aerial Vehicles (UAV) to Block 5;
2. Retrofit of two (2) existing MGCS Block 30;
3. Addition of three (3) MQ-9A Block 5;
4. Addition of eight (8) Multi-Spectral Targeting Systems (MTS-B) AN/DAS-1A;
5. Addition of eight (8) General Atomics AN/APY-8 Lynx (exportable) Synthetic Aperture Radar/Ground Moving Target Indicator (SAR/GMTI) Systems, with Maritime Wide Area Search (MWAS) capability;
6. Addition of two (2) Mobile Ground Control Station (MGCS) Block 30, and;
7. Addition of twenty-seven (27) Honeywell H-764 Adaptive Configurable Embedded Global Positioning System/Inertial Guidance Units (EGI) with Selective Availability Anti-Spoofing Module (SAASM) (24 installed, 3 spares).

The retrofit, addition of aircraft, and inclusion of the above listed MDE not enumerated in the previous notifications will result in a net increase in MDE costs of $180 million and non-MDE cost of $138 million. These notifications represent the entirety of Italy's MQ-9 program, which will now increase in value from $393 million to $711 million.

(iv) *Significance*: As Italy continues with its plans to develop a robust MQ-9A fleet, it has requested additional aircraft. Enhancement of Italy's MQ-9A aircraft will provide strike capability to augment intelligence, surveillance, and reconnaissance (ISR) capability. The proposed sale increases Italy's capability to participate in Europe and NATO security operations and supports the foreign and national security policies of the US by enhancing the ISR and strike capability of a major ally.

(v) *Justification*: Italy is a major political and economic power in NATO and a key democratic partner of the United States in ensuring peace and stability around the world. Italy requests these capabilities to provide for the defense of deployed troops, regional security, and interoperability with the United States.

(vi) *Sensitivity of Technology*:

1. The MQ-9A Block 5 Unmanned Aerial System (UAS) is UNCLASSIFIED. The highest level of classified information required for training, operation, and maintenance is SECRET. The MQ-9A Block 5 is a Medium Altitude, long-endurance (MALE) remotely piloted aircraft that can be used for surveillance, military reconnaissance, and targeting missions. Real-time missions are flown under the control of a pilot in a Ground Control Station (GCS). A datalink is maintained that uplinks control commands and downlinks video with telemetry data. Line-of-Sight (LOS) communications is enabled through C-Band datalink and Beyond-Line-of-Sight (BLOS) communications is enabled through Ku-Band Satellite Communication (SATCOM). Control of the aircraft and payload are done through direct manual inputs by the crew or through preprogrammed mission. Preprogrammed missions are planned and uploaded by the pilots via the GCS and are executed through the control of an onboard suite of redundant computers and sensors. Payload imagery and data are downlinked to the GCS. The pilot may initiate pre-programmed missions once the aircraft is airborne and lands the aircraft when the mission is completed. Pilots can change preprogrammed mission parameters as often as required. When operated BLOS, aircraft control is given to other strategically placed Ground Control Stations—permitting remote split operations (RSO). The MQ-9A Block 5 is designed to carry 850 pounds of internal payload with maximum fuel and can carry multiple mission payloads aloft. The MQ-9A Block 5 will be configured for the following payloads: Electro-Optical/Infrared (EO/IR), Synthetic Aperture Radar (SAR), Electronic Support Measures (ESM), Signals Intelligence (SIGINT), laser designators, and various weapons packages. The MQ-9A Block 5 systems will include the following components:

a. The Ground Control Station (GCS) can be either fixed or mobile. The fixed GCS is enclosed in a customer-specified shelter. It incorporates workstations that allow operators to control and monitor the aircraft, as well as record and exploit downlinked payload data. The mobile GCS allows operators to perform the same functions and is contained on a mobile trailer. Workstations in either GCS can be tailored to meet customer requirements. The GCS, technical data, and documents are UNCLASSIFIED.

b. The Raytheon Multi-Spectral Targeting System-B (MTS-B) integrates electro-optical (EO), infrared (IR), laser designation and laser illumination capabilities to provide detection, ranging, and tracking capabilities specifically for high-altitude applications. This advanced EO and IR system provides long-range surveillance, high altitude target acquisition, tracking, range finding, and laser designation for the Hellfire missile and for all tri-service and NATO laser-guided munitions.

c. The AN/APY-8 Lynx Block 20 Synthetic Aperture Radar and Ground Moving Target Radar system provides all-weather surveillance, tracking and targeting for military and commercial customers from manned and unmanned vehicles. The AN/PY-8 Lynx Block 20SAR/GMTI radar system and technical data/documents are UNCLASSIFIED.

d. The Honeywell H-764 Adaptive Configurable Embedded Global Positioning System/Inertial Guidance Unit (EGI) contains the Force 524D GPS Receiver card with Selective Availability Anti-Spoofing Module (SAASM). The Force 524D is a 24-channel SAASM based GPS receiver with precise positioning service capability built upon Trimble's next generation GPS technology. The Force 524D retains backward compatibility with the proven Force 5GS while adding new functionality to interface with the digital antenna electronics to significantly improve anti-jam performance. The host platform can select the radio frequency of digital antenna electronics interface. In the digital mode, the Force 524D is capable of controlling up to 16 independent beams.

(vii) *Date Report Delivered to Congress*: December 4, 2019

[FR Doc. 2019–28189 Filed 12–30–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 18–39]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Karma Job at *karma.d.job.civ@mail.mil* or (703) 697–8976.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 18–39 with attached Policy Justification and Sensitivity of Technology.

Dated: December 23, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

NOV 16 2018

The Honorable Paul D. Ryan
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 18-39, concerning the Air Force's proposed Letter(s) of Offer and Acceptance to the NATO Support and Procurement Agency for defense articles and services estimated to cost $320.5 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001–06–C

Transmittal No. 18-39

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser*: NATO Support and Procurement Agency (NSPA) as Lead Nation for Belgium, Czech Republic, Denmark, Finland, Greece, Hungary, Italy Netherlands, Norway, Poland, Portugal, Spain and the United Kingdom

(ii) *Total Estimated Value*:

Major Defense Equipment *.	$240.5 million
Other	$ 80.0 million
TOTAL	$320.5 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase*:

Major Defense Equipment (MDE):

Five hundred (500) KMU-556 F/B Joint Direct Attack Munition (JDAM) Kits for GBU-31 2000-lbs

Forty (40) KMU-557 F/B JDAM Kits for GBU-31 2000-lbs

One thousand five hundred (1,500) KMU-572 F/B JDAM Kits for GBU-38 500-lbs

One thousand (1,000) Munitions Adapter Unit (MAU)-210 F/B

Enhanced Computer Control Groups (ECCGs) for GBU-48 1,000-lb EPII
Three hundred (300) MAU-210 F/B ECCGs for GBU-49 500-lbs EPII
Three hundred (300) MXU-650K/B AFGs for GBU-49 500-lbs EPII
One thousand and twenty-five (1,025) MAU-209 C/B or MAU-169 L/B CCGs for GBU-12 500 lbs Paveway II
One thousand and twenty-five (1,025) MXU-650 K/B AFGs for GBU-12 500 lbs Paveway II
Four thousand three hundred sixty-five (4,365) Joint Programmable Fuze, FMU-152 A/B for all GBU types

Non-MDE: Also includes Detector Sensing Unit (DSU)-38A/B Laser kits, DSU-33D/B proximity sensors, Wireless Paveway Avionics Kit (WIPAK) interfaces for Enhanced Paveway II bombs, repair and return services, transportation, engineering services, and other support services.

(iv) *Military Department*: Air Force

(v) *Prior Related Cases, if any*: N4-D-YAA

(vi) *Sales Commission, Fee, etc., Paid, Offered. or Agreed to be Paid*: None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold*: See Attached Annex

(viii) *Date Report Delivered to Congress*: November 16, 2018

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

NATO Support and Procurement Agency—Precision Guided Munitions

NATO Support and Procurement Agency as Lead Nation has requested a possible sale of precision guided munitions kits. The components that comprise the kits are: five hundred (500) KMU-556 F/B Joint Direct Attack Munition (JDAM) Kits for GBU-31 2000-lbs; forty (40) KMU-557 F/B JDAM Kits for GBU-31 2000-lbs; one thousand five hundred (1,500) KMU-572 F/B JDAM Kits for GBU-38 500-lbs; one thousand (1,000) Munitions Adapter Unit (MAU)-210 F/B Enhanced Computer Control Groups (ECCGs) for GBU-48 1,000-lb EPII; three hundred (300) MAU-210 F/B ECCGs for GBU-49 500-lbs EPII; three hundred (300) MXU-650K/B AFGs for GBU-49 500-lbs EPII; one thousand twenty-five (1,025) MAU-209 C/B or MAU-169 L/B CCGs for GBU-12 500 lbs Paveway II; one thousand twenty-five (1,025) MXU-650 K/B AFGs for GBU-12 500 lbs Paveway II; four thousand three hundred sixty-five (4,365) Joint Programmable Fuze, FMU-152 A/B for all GBU types. Also includes Detector Sensing Unit (DSU)-38A/B Laser kits, DSU-33D/B proximity sensors, Wireless Paveway Avionics Kit (WIPAK) interfaces for Enhanced Paveway II bombs, repair and return services, transportation, engineering services, and other support services. The estimated value is $320.5 million.

This proposed sale supports the foreign policy and national security of the United States by increasing the flexibility of Belgium, Czech Republic, Denmark, Finland, Greece, Hungary, Italy, Netherlands, Norway, Poland, Portugal, Spain and the United Kingdom—twelve NATO nations and one Partnership for Peace nation—to contribute to overseas contingency operations. This sale increases the quantity of precision-guided munitions within NATO and allows for their pre-coordinated transfer in support of national and NATO requirements.

The proposed sale improves NATO's capability to meet current and future ground threats with precision. NATO will use the enhanced capability as a deterrent to regional threats, and to increase interoperability within contingency operations. Many of the purchasing nations already have precision-guided munitions in their inventories; and they will all have no difficulty absorbing these kits.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractors for production are the Boeing Corporation of St Louis, Missouri, and Raytheon Missile Systems of Tucson, Arizona. The principle contractor for integration is unknown and will be determined during contract negotiations. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to NATO.

There is no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 18-39

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex Item

No. vii

(vii) *Sensitivity of Technology*:

1. Joint Direct Attack Munitions (JDAM) is a Joint Service weapon that uses an onboard GPS-aided Inertial Navigation System (INS) Guidance Set with a MK 82, MK 83, MK 84, BLU-109, BLU-110, BLU-111, BLU-117, BLU-126 (Navy) or BLU-129 warhead. The Guidance Set, when combined with a warhead and appropriate fuze, forms a JDAM Guided Bomb Unit (GBU). The JDAM Guidance Set gives these bombs adverse weather capability with improved accuracy. The JDAM weapon can be delivered from modest standoff ranges at high or low altitudes against a variety of land and surface targets during the day or night. After release, JDAM autonomously guides to a target, using the resident GPS-aided INS guidance system. JDAM is capable of receiving target coordinates via preplanned mission data from the delivery aircraft, by onboard aircraft sensors (i.e. FLIR, Radar, etc) during captive carry, or from a third party source via manual or automated aircrew cockpit entry. The KMU-556 F/B, KMU-557 F/B are the tail kits for the GBU-31, the KMU-572 is the tail kit for the GBU-38. The JDAM as an All Up Round is UNCLASSIFIED; technical data for JDAM is classified up to SECRET.

2. Detector Sensor Unit (DSU)-38A/B is a laser-illuminated target detector that adds a Precision Laser Guidance Set (PLGS) to inventory JDAMs, giving the weapon system optional semi-active laser guidance in addition to its other GPS/INS guidance modes. The DSU-38A/B is a DSU-33 (proximity fuze) form-factored passive laser seeker that can be easily installed in the field to the front of existing JDAM weapons and is connected to the Guidance Set via an externally mounted strap-on harness kit. The DSU-38 provides an additional capability to engage mobile targets moving up to 70 mph. The addition of the DSU-38 Laser sensor combined with additional cabling and mounting hardware turns a standard GBU-38 JDAM into a GBU-54 Laser JDAM. The DSU-38 hardware is UNCLASSIFIED; technical data and other documentation are classified up to SECRET.

3. Enhanced Paveway II (EPII), a Laser Guided Bomb (LGB), is a maneuverable, free fall weapon that guides to a spot of laser energy reflected off of the target. The ''enhanced'' component is the addition of GPS guidance to the laser seeker. This dual-mode allows the weapon to operate in all-weather conditions. The LGB is delivered like a normal general purpose (GP) warhead and the semi-active guidance corrects for many of the normal errors inherent in any delivery system. Laser designation for the LGB can be provided by a variety of laser target markers or designators. An LGB consists of an Enhanced Computer Control Group (ECCG) that is not warhead-specific, and a warhead-specific Air Foil Group (AFG) that attaches to the nose and tail of a GP bomb body. The EPII can use either the FMU-152 or FMU-139 fuze.

The overall weapon is classified CONFIDENTIAL.

GBU-48 is a 1,0001b (MK-84 or BLU-117 B/B) GP bomb body fitted with the MXU- 667 AFG, and MAU-210 F/B ECCG to guide to its laser-designated target.

GBU-49 is a 5001bs (MK-82 or BLU-111 B/B) GP bomb body fitted with the MXU- 650 AFG, and MAU-210 F/B ECCGs to guide to its laser-designated target.

4. Paveway II (PWII), a Laser Guided Bomb (LGB), is a maneuverable, free-fall weapon that guides to a spot of laser energy reflected off of the target. The LGB is delivered like a normal general purpose (GP) warhead and the semi-active guidance corrects for many of the normal errors inherent in any delivery system. Laser designation for the LGB can be provided by a variety of laser target markers or designators. A LGB consists of a MAU-209C/B or MAU-169 L/B Computer Control Group (CCG) that is not warhead-specific, and a warhead-specific Air Foil Group (AFG) that attaches to the nose and tail of a General Purpose bomb body. The PWII can use either the FMU-152 or FMU-139 fuze. The overall weapon is classified CONFIDENTIAL.

GBU-12 is a 5001bs (MK-82 or BLU-111 B/B) GP bomb body fitted with the MXU- 650 AFG, and MAU-209 C/B or MAU-169 L/B CCGs to guide to its laser designated target.

5. Joint Programmable Fuze (JPF) FMU-152 is a Multi-Delay, Multi-Arm and Proximity Sensor Compatible with General Purpose Blast, Frag and Hardened-Target Penetrator Warheads. It is cockpit selectable in-flight (prior to release) when used with JDAM weapons. It can interface with the following weapons: GBU-10, GBU-12, GBU-15, GBU-16, GBU-24, GBU-27, GBU-28, GBU-31, GBU-32, GBU-38, and AGM-130. The JPF hardware is UNCLASSIFIED.

6. If a technologically advanced adversary obtained knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

7. A determination has been made that NSPA and the participating countries can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

8. All defense articles and services listed in this transmittal have been authorized for release and export to NATO Support and Procurement Agency, Belgium, Czech Republic, Denmark, Finland, Greece, Hungary, Italy, Netherlands, Norway, Poland, Portugal, Spain, and the United Kingdom.

[FR Doc. 2019–28214 Filed 12–30–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 18–44]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Karma Job at *karma.d.job.civ@mail.mil* or (703) 697–8976.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 18–44 with attached Policy Justification and Sensitivity of Technology.

Dated: December 23, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

NOV 16 2018

The Honorable Paul D. Ryan
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 18-44, concerning the Navy's proposed Letter(s) of Offer and Acceptance to the Government of Japan for defense articles and services estimated to cost $561 million. After this letter is delivered to your office, we plan to issue a news release to notify the public of this proposed sale.

Sincerely,

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 5001–06–C

Transmittal No. 18-44

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser*: Government of Japan

(ii) *Total Estimated Value*:

Major Defense Equipment * ..	$524 million
Other	$ 37 million
TOTAL	$561 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase*:

Major Defense Equipment (MDE):

Eight (8) Standard Missile-3 (SM-3) Block 1B Missiles

Thirteen (13) Standard Missile-3 (SM-3) Block 2A Missiles

Non-MDE: Also included are SM-3 1B and 2A missile canisters, U.S. Government and contractor provided technical assistance, engineering and logistical support services, and other related elements of logistical and program support.

(iv) *Military Department*: Navy (JA-P-AUA)

(v) *Prior Related Cases, if any*: JA-P-ATP, JA-P-ATH

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid*: None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold*: See Attached Annex

(viii) *Date Report Delivered to Congress*: November 16, 2018

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Japan—Standard Missile-3 (SM-3) Missiles

The Government of Japan has requested to buy eight (8) Standard Missile-3 (SM-3) Block 1B Missiles and thirteen (13) Standard Missile-3 (SM-3) Block 2A Missiles. Also included are SM-3 1B and 2A missile canisters, U.S. Government and contractor provided technical assistance, engineering and logistical support services, and other related elements of logistical and program support. The total estimated program cost is $561 million.

This proposed sale will contribute to the foreign policy and national security of the United States by improving the security of a major ally that is a force for political stability and economic progress in the Asia-Pacific region. It is vital to U.S. national interests to assist Japan in developing and maintaining a strong and effective self-defense capability.

The proposed sale will provide Japan with an increased ballistic missile defense capability to assist in defending the Japanese homeland and U.S. personnel stationed there. Japan will have no difficulty absorbing these additional munitions and support into the Japan Maritime Self Defense Force (JMSDF).

The proposed sale of this equipment and support does not alter the basic military balance in the region.

The principal contractor for the SM-3 Block 1B and 2A All Up Rounds will be Raytheon Missile Systems, Tucson, Arizona. The prime contractor for the Mk-21 and Mk-29 canisters and PHS&T kits will be BAE Systems, Minneapolis, Minnesota.

There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require annual trips to Japan involving U.S. Government and contractor representatives for technical reviews, support, and oversight for approximately five years.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 18-44

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology*:

1. The proposed sale will involve the release of sensitive technology to the Government of Japan related to the Standard Missile-3 (SM-3):

a. The Block IB is an iteration of the SM-3 family. It has distinct advantages over the older Block IA variant previously sold to Japan, including an enhanced warhead which improves the search, discrimination, acquisition and tracking functions in order to address emerging threats. Once enclosed in the canister, the SM-3 Block IB missile is classified CONFIDENTIAL.

b. The ship- or ground-launched SM-3 Block IIA is the most recent iteration in the SM-3 family. It has two distinct new features: larger rocket motors that will allow it to defend broader areas from ballistic missile threats, and a larger kinetic warhead. The kinetic warhead has been enhanced, improving the search, discrimination, acquisition and tracking functions, to address emerging threats. Once enclosed in the canister, the SM-3 Block IIA missile is classified CONFIDENTIAL. The optics hardware and signal processor are classified SECRET.

2. If a technologically advanced adversary obtained knowledge of the specific hardware or software in the proposed sale, the information could be used to develop counter-measures which might reduce weapons system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that Japan can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

4. All defense articles and services listed in this transmittal have been authorized for release and export to Japan.

[FR Doc. 2019–28204 Filed 12–30–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 19–0P]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Arms sales notice.

SUMMARY: The Department of Defense is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT: Karma Job at *karma.d.job.civ@mail.mil* or (703) 697–8976.

SUPPLEMENTARY INFORMATION: This 36(b)(5)(C) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 19–0P with attached Policy Justification and Sensitivity of Technology.

Dated: December 23, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

NOV 2 2 2019

The Honorable Nancy Pelosi
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the reporting requirements of Section 36(b)(5)(C) of the Arms Export Control Act (AECA), as amended, we are forwarding Transmittal No. 19-0P. This notification relates to enhancements or upgrades from the level of sensitivity of technology or capability described in the Section 36(b)(1) AECA certification 13-40 of July 9, 2013.

Sincerely,

Charles W. Hooper
Lieutenant General, USA
Director

Enclosures:
1. Transmittal

BILLING CODE 5001–06–C

Transmittal No. 19-0P

REPORT OF ENHANCEMENT OR UPGRADE OF SENSITIVITY OF TECHONOLOGY OR CAPABILITY (SEC 36(B)(5)(C), AECA)

(i) *Prospective Purchaser*: Government of France

(ii) *Sec 36(b)(1), AECA Transmittal No.*: 13-40

Date: July 9, 2013

Military Department: Air Force

(iii) *Description*: On July 9, 2013, Congress was notified by Congressional certification transmittal number 13-40 of the possible sale under Section 36(b)(1) of the Arms Export Control Act of 16 MQ-9 Reaper Remotely Piloted Aircraft; 8 Mobile Ground Control Stations; 48 Honeywell TPE331-10T Turboprop Engines (16 installed and 32 Spares); 24 Satellite Earth Terminal Substations; 40 Ku Band Link-Airborne Communication Systems; 40 General Atomics Lynx (exportable) Synthetic Aperture Radar/Ground Moving Target Indicator (SAR/GMTI) Systems; 40 AN/DAS-1 Multi-Spectral Targeting System (MTS)-B; 40 Ground Data Terminals; 40 ARC-210 Radio Systems; 40 Embedded Global Positioning System/Inertial Navigation Systems; and 48 AN/APX-119 and KIV-119 Identify Friend or Foe (IFF) Systems. Also provided are spare and repair parts, communication, test, and support equipment, publications and technical documentation, airworthiness and maintenance support, site surveys and bed down planning, personnel training and training equipment, operational flight test, U.S. Government and contractor technical and logistics personnel services, and other related elements of logistics support. The estimated total cost was $1.5 billion. Major Defense Equipment (MDE) constituted $765 million of this total.

On July 26, 2018, Congress was notified by Congressional certification transmittal number 18-0B of the retrofit of MQ-9s to become weapons capable, and the inclusion of 100 GBU-49 Enhanced Paveway dual mode GPS and laser guided bomb kits comprised of MXU-650 Air Foil Group (AFG) and MAU-210 Enhanced Computer Control Group (ECCG); 200 FMU-152 fuzes; 650 AGM-114R Hellfire missiles, with active warheads; 45 AGM-114R Hellfire training missiles, without active warhead; and 6 Hellfire Captive Air Training Missiles. The retrofit and inclusion of MDE not enumerated in the original notification resulted in an increase in the cost of MDE by $210 million. The new MDE cost was $975

million. The total case value increased to $1.71 billion.

This transmittal reports the:

1) retrofit of four (4) MQ-9A Block 1 to MQ-9A Block 5;

2) addition of four (4) MQ-9A Block 5; and

3) addition of fourteen (14) Embedded GPS/INS (EGI) with GPS Security Devices.

The MDE cost of these items is $80 million, resulting in a new MDE cost of $1.055 billion. The total case value will remain $1.71 billion.

(iv) *Significance*: This notification is being provided as the retrofit of the MQ-9A systems and the inclusion of MDE items not originally notified represent an increase in capability over what was originally notified. This equipment will provide France's MQ-9 program with the equipment necessary to support the capability requested.

(v) *Justification*: This proposed sale will support the foreign policy and national security of the United States by helping to improve the security of a NATO ally which continues to be an important force for political stability and economic progress in Western Europe.

(vi) *Sensitivity of Technology*: The MQ-9A is a long-endurance, medium altitude Remotely Piloted Aircraft (RPA) that can be used for surveillance, military reconnaissance, and targeting missions. MQ-9A is capable of performing real-time flown under the control of a pilot in a Ground Control Station (GCS). A data link is maintained that uplink commands and downlink video with telemetry data. The data link can be a Line-of-Sight (LOS) C-Band communication or Beyond Line-of-Sight (BLOS) Ku-Band Satellite Communication (SATCOM). Aircraft can be handed off to other strategically placed ground control stations. The MQ-9A is designed to carry 800 pounds of internal payload with maximum fuel and can carry multiple mission payload aloft such as kinetics, Electro-Optical/Infrared (EO/IR), Synthetic Aperture Radar (SAR), and other laser target designators. Block 5 includes a redesigned forward avionics bay, NSA Type 1 encrypted data links, enhanced power, dual wing-tip ARC-210 radios, payload control computer, enhanced HMI and payload control in GCS.

(vii) *Date Report Delivered to Congress*: November 22, 2019

[FR Doc. 2019–28186 Filed 12–30–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2019–ICCD–0101]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; 2019 Temporary Emergency Impact Aid for Displaced Students

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before January 30, 2020.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2019–ICCD–0101. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W–208D, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Christopher Tate, 202–453–6047.

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: 2019 Temporary Emergency Impact Aid for Displaced Students.

OMB Control Number: 1810–0739.

Type of Review: An extension 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: 2,240.

Abstract: The Department of Education (Department) is requesting an extension of this 2019 Temporary Emergency Impact Aid for Displaced Students information collection. The Additional Supplemental Appropriations for Disaster Relief Act, 2019 (Pub. L. 116–20, hereafter referred to as the Disaster Supplemental) was signed into law by President Trump on June 6, 2019. The Department of Education plans to use the discretion afforded to the Secretary by the Disaster Supplemental to award Restart funding to SEAs, which, in turn, will provide assistance to LEAs to defray expenses related to the restart of operations in, the reopening of, and the re-enrollment of students in elementary and secondary schools that serve an area affected by a covered disaster.

Dated: December 23, 2019.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer.

[FR Doc. 2019–28227 Filed 12–30–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2019–ICCD–0100]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; 2019 Immediate Aid To Restart School Operations

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before January 30, 2020.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2019–ICCD–0100. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W–208D, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Molly Budman, 202–453–5791.

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: 2019 Immediate Aid to Restart School Operations.

OMB Control Number: 1810–0740.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 31.

Total Estimated Number of Annual Burden Hours: 1,240.

Abstract: The Department of Education (Department) is requesting an extension of this 2019 Immediate Aid to Restart School Operations information collection. The Additional Supplemental Appropriations for Disaster Relief Act, 2019 (Pub. L. 116–20, hereafter referred to as the Disaster Supplemental) was signed into law by President Trump on June 6, 2019. The Department of Education plans to use the discretion afforded to the Secretary by the Disaster Supplemental to award Restart funding to SEAs, which, in turn, will provide assistance to LEAs to defray expenses related to the restart of operations in, the reopening of, and the re-enrollment of students in elementary and secondary schools that serve an area affected by a covered disaster.

Dated: December 23, 2019.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer.

[FR Doc. 2019–28229 Filed 12–30–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–660–000]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization; Bolt Energy Marketing, LLC

This is a supplemental notice in the above-referenced proceeding of Bolt Energy Marketing, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is January 13, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC

Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 23, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–28255 Filed 12–30–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3273–024]

Notice Soliciting Scoping Comments; Chittenden Falls Hydropower, Inc.

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.:* 3273–024.

c. *Date filed:* May 31, 2019.

d. *Applicant:* Chittenden Falls Hydropower, Inc. (Chittenden Falls Hydro).

e. *Name of Project:* Chittenden Falls Hydropower Project.

f. *Location:* On Kinderhook Creek, near the Town of Stockport, Columbia County, New York. The project does not occupy federal land.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mark Boumansour, Chief Operating Officer, Gravity Renewables, Inc., 1401 Walnut Street, Suite 420, Boulder, CO 80302; (303) 440–3378; *mark@gravityrenewables.com* and/or Celeste N. Fay, Regulatory Manager, Gravity Renewables, Inc., 5 Dartmouth Drive, Suite 104, Auburn, NH 03032; (413) 262–9466; *celeste@gravityrenewables.com.*

i. *FERC Contact:* Monir Chowdhury at (202) 502–6736 or *monir.chowdhury@ferc.gov.*

j. *Deadline for filing scoping comments:* 30 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file scoping comments 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–3273–024.

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 is not ready for environmental analysis at this time.

l. *Project Description:*

The existing Chittenden Falls Hydropower Project consists of: (1) An approximately 4-foot-high, 320-foot-long concrete gravity dam, topped with 2-foot-high wooden flashboards, and having a dam crest elevation of 59.6 feet National Geodetic Vertical Datum of 1929 (NGVD29); (2) a reservoir with a surface area of about 18 acres and a storage capacity of 63 acre-feet at a normal pool elevation of 61.6 feet NGVD29; (3) an 8-foot-wide, 22-foot-long intake structure on the east side of the dam connecting to an 8-foot-wide, 118-foot-long concrete and wooden power canal; (4) a 7.5-foot-diameter, 45-foot-long steel penstock that conveys water from the power canal to a powerhouse on the east side of the dam containing two turbine-generator units with a total rated capacity of 453 kilowatts (kW); (5) an 8-foot-wide, 10-foot-long intake structure on the west side of the dam connecting to a 6-foot-diameter, 62-foot-long steel penstock; (6) a powerhouse on the west side of the dam containing a single turbine-generator unit with a rated capacity of 300 kW; (7) two 480-volt, 40-foot-long generator leads connecting the east powerhouse to a transformer yard and a 2,300-volt, 400-foot-long generator lead connecting the west powerhouse to the transformer yard; and (8) appurtenant facilities.

The Chittenden Falls Project is operated in a run-of-river mode with an estimated average annual generation of 2,300 megawatt-hours between 2012 and 2018. Chittenden Falls Hydro proposes to continue to operate the project in run-of-river mode.

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 address the document. For assistance, contact FERC Online Support. A copy is available for inspection and reproduction at the address in item h above.

n. 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. *Scoping Process:*

The Commission staff intends to prepare an Environmental Assessment (EA) for the Chittenden Falls Hydropower Project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Commission staff does not propose to conduct any on-site scoping meetings at this time. Instead, we are soliciting comments, recommendations, and information, on the Scoping Document 1 (SD1) issued December 23, 2019.

Copies of SD1 outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list. Copies of SD1 may be viewed on the web 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, call 1–866–208–3676 or for TTY, (202) 502–8659.

Dated: December 23, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–28260 Filed 12–30–19; 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:

Docket Numbers: RP20–328–000.

Applicants: LA Storage, LLC.

Description: § 4(d) Rate Filing: Filing of Negotiated Rate, Conforming IW Agreement (Mansfield) to be effective 12/15/2019.

Filed Date: 12/13/19.

Accession Number: 20191213–5137.

Comments Due: 5 p.m. ET 12/26/19.

Docket Numbers: RP20–329–000.
Applicants: Rockies Express Pipeline LLC.
Description: Rockies Express Pipeline LLC submits tariff filing per 154.204: Neg Rate 2019–12–13 E2W (5) to be effective 12/14/2019 under RP20–329.
Filed Date: 12/13/19.
Accession Number: 20191213–5175.
Comments Due: 5 p.m. ET 12/26/19.

Docket Numbers: RP20–330–000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: § 4(d) Rate Filing: Non-Conforming—FTP—Who Dat MC 547—Removal to be effective 11/1/2019.
Filed Date: 12/16/19.
Accession Number: 20191216–5030.
Comments Due: 5 p.m. ET 12/30/19.

Docket Numbers: RP20–331–000.
Applicants: Great Lakes Gas Transmission Limited Par.
Description: § 4(d) Rate Filing: Prepayments to be effective 1/15/2020.
Filed Date: 12/16/19.
Accession Number: 20191216–5100.
Comments Due: 5 p.m. ET 12/30/19.

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: December 17, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–28206 Filed 12–30–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2124–021.
Applicants: Spring Canyon Energy LLC.
Description: Triennial Report of Spring Canyon Energy LLC.
Filed Date: 12/20/19.
Accession Number: 20191220–5364.
Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: ER10–2125–022.
Applicants: Judith Gap Energy LLC.
Description: Triennial Report of Judith Gap Energy LLC.
Filed Date: 12/20/19.
Accession Number: 20191220–5372.
Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: ER10–2128–021.
Applicants: Wolverine Creek Energy LLC.
Description: Triennial Report of Wolverine Creek Energy LLC.
Filed Date: 12/20/19.
Accession Number: 20191220–5358.
Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: ER10–2132–021.
Applicants: Willow Creek Energy LLC.
Description: Triennial Report of Willow Creek Energy LLC.
Filed Date: 12/20/19.
Accession Number: 20191220–5359.
Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: ER10–2764–021.
Applicants: Vantage Wind Energy LLC.
Description: Triennial Report of Vantage Wind Energy LLC.
Filed Date: 12/20/19.
Accession Number: 20191220–5363.
Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: ER10–2861–007; ER13–1504–008; ER10–2866–007.
Applicants: Fountain Valley Power, L.L.C., SWG Arapahoe, LLC, SWG Colorado, LLC.
Description: Updated Market Power Analysis for the Northwest Region of Fountain Valley Power, L.L.C., et al.
Filed Date: 12/20/19.
Accession Number: 20191220–5380.
Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: ER16–1720–010.
Applicants: Invenergy Energy Management LLC.
Description: Triennial Report of Invenergy Energy Management LLC.
Filed Date: 12/20/19.
Accession Number: 20191220–5374.
Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: ER20–442–000.
Applicants: Wildcat I Energy Storage, LLC.
Description: Supplement to November 22, 2019 Wildcat I Energy Storage, LLC tariff filing.
Filed Date: 12/20/19.
Accession Number: 20191220–5371.
Comments Due: 5 p.m. ET 1/10/20.

Docket Numbers: ER20–443–000.
Applicants: Acorn I Energy Storage, LLC.
Description: Supplement to November 22, 2019 Acorn I Energy Storage, LLC tariff filing.
Filed Date: 12/20/19.
Accession Number: 20191220–5370.
Comments Due: 5 p.m. ET 1/10/20.

Docket Numbers: ER20–650–001.
Applicants: El Paso Electric Company.
Description: Tariff Amendment: Service Agreement No. 325, Large Generator Interconnection Agreement with EDF to be effective 12/9/2019.
Filed Date: 12/23/19.
Accession Number: 20191223–5002.
Comments Due: 5 p.m. ET 1/13/20.

Docket Numbers: ER20–670–000.
Applicants: Consolidated Edison Company of New York, Inc.
Description: § 205(d) Rate Filing: DCFC Filing 12–2019 to be effective 12/23/2019.
Filed Date: 12/23/19.
Accession Number: 20191223–5003.
Comments Due: 5 p.m. ET 1/13/20.

Docket Numbers: ER20–671–000.
Applicants: Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 205 filing re: LGIA (SA 2500) between Niagara Mohawk and Covanta Niagara I to be effective 11/26/2019.
Filed Date: 12/23/19.
Accession Number: 20191223–5005.
Comments Due: 5 p.m. ET 1/13/20.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR20–2–000.
Applicants: North American Electric Reliability Corporation, SERC Reliability Corporation.
Description: Joint Petition of the North American Electric Reliability Corporation and SERC Reliability Corporation for Approval of Amendments to SERC Reliability Corporation's Bylaws.
Filed Date: 12/20/19.
Accession Number: 20191220–5351.
Comments Due: 5 p.m. ET 1/10/20.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing

requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 23, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–28253 Filed 12–30–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Docket Numbers: ER10–1936–008; ER14–2499–004.
Applicants: Carville Energy LLC, Oneta Power, LLC.
Description: Notice of Change in Status of Carville Energy LLC, et al.
Filed Date: 12/20/19.
Accession Number: 20191220–5414.
Comments Due: 5 p.m. ET 1/10/20.

Docket Numbers: ER10–2727–005; ER10–1469–006; ER13–785–005; ER10–1453–006; ER13–713–005; ER10–1459–010; ER10–2728–007; ER10–1451–005; ER10–1474–005; ER10–2687–005; ER10–1467–006; ER10–1478–007; ER10–1473–005; ER10–2688–008; ER10–1468–006; ER10–2689–008.
Applicants: Allegheny Energy Supply Company, LLC, The Cleveland Electric Illuminating Company, Green Valley Hydro, LLC, Jersey Central Power & Light Company, Metropolitan Edison Company, Monongahela Power Company, Ohio Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, Potomac Edison Company, The Toledo Edison Company, West Penn Power Company, FirstEnergy Generation, LLC, FirstEnergy Generation Mansfield Unit 1, Corp., FirstEnergy Nuclear Generation, LLC, FirstEnergy Solutions Corp.
Description: Triennial Market Power Update Analysis of the FirstEnergy Companies, et al.
Filed Date: 12/20/19.
Accession Number: 20191220–5405.
Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: ER11–47–011; ER12–1540–009; ER12–1541–009; ER12–1542–009; ER12–1544–009; ER17–1930–003; ER17–1931–003; ER17–1932–003; ER14–594–013; ER11–46–014; ER11–41–011; ER12–2343–009; ER13–1896–015; ER16–323–007.
Applicants: Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Wheeling Power Company, Public Service Company of Oklahoma, AEP Texas Inc., Southwestern Electric Power Company, Ohio Power Company, AEP Energy Partners, Inc., AEP Retail Energy Partners LLC, AEP Energy, Inc., AEP Generation Resources Inc., Ohio Valley Electric Corporation.
Description: Updated Market Power Analysis in the Northeast Region of the AEP MBR Affiliates, et al.
Filed Date: 12/23/19.
Accession Number: 20191223–5171.
Comments Due: 5 p.m. ET 2/21/20.

Docket Numbers: ER18–1122–001.
Applicants: Ameren Illinois Company.
Description: Compliance filing of Ameren Illinois Company.
Filed Date: 12/20/19.
Accession Number: 20191220–5407.
Comments Due: 5 p.m. ET 1/10/20.

Docket Numbers: ER19–2529–002.
Applicants: Black Hills Wyoming, LLC.
Description: Tariff Amendment: Response to November 25, 2019 Staff Letter to be effective 10/2/2019.
Filed Date: 12/23/19.
Accession Number: 20191223–5166.
Comments Due: 5 p.m. ET 1/13/20.

Docket Numbers: ER19–2708–001.
Applicants: PJM Interconnection, L.L.C.
Description: Compliance filing: Compliance filing per the Commission's 11/25/2019 order in Docket No. ER19–2708 to be effective 11/27/2019.
Filed Date: 12/23/19.
Accession Number: 20191223–5094.
Comments Due: 5 p.m. ET 1/13/20.

Docket Numbers: ER20–335–000.
Applicants: McKenzie Electric Cooperative, Inc.
Description: Supplement to November 7, 2019 McKenzie Electric Cooperative, Inc. tariff filing.
Filed Date: 12/20/19.
Accession Number: 20191220–5349.
Comments Due: 5 p.m. ET 1/10/20.

Docket Numbers: ER20–673–000.
Applicants: BP Energy Company.
Description: § 205(d) Rate Filing: Category 1 Filing for the Northwest Region to be effective 12/31/2019.
Filed Date: 12/23/19.
Accession Number: 20191223–5011.
Comments Due: 5 p.m. ET 1/13/20.

Docket Numbers: ER20–674–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Allocation of Penalty Costs Assoc. with NERC Penalty Assessments re OA, Sch. 11 to be effective 3/29/2019.
Filed Date: 12/23/19.
Accession Number: 20191223–5051.
Comments Due: 5 p.m. ET 1/13/20.

Docket Numbers: ER20–675–000.
Applicants: Buckeye Power, Inc., PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Revised SA No. 4753—NITSA among PJM and Buckeye Power, Inc. to be effective 12/1/2019.
Filed Date: 12/23/19.
Accession Number: 20191223–5076.
Comments Due: 5 p.m. ET 1/13/20.

Docket Numbers: ER20–676–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Resubmittal of Stated Rate Tariff to be effective 3/23/2020.
Filed Date: 12/23/19.
Accession Number: 20191223–5082.
Comments Due: 5 p.m. ET 1/13/20.

Docket Numbers: ER20–677–000.
Applicants: American Transmission Systems, Incorporated, PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: ATSI submits one ECSA, Service Agreement No. 5443 with Toledo Edison to be effective 2/21/2020.
Filed Date: 12/23/19.
Accession Number: 20191223–5101.
Comments Due: 5 p.m. ET 1/13/20.

Docket Numbers: ER20–678–000.
Applicants: Trans Bay Cable LLC.
Description: § 205(d) Rate Filing: Annual TRBAA Filing to be effective 1/1/2020.
Filed Date: 12/23/19.
Accession Number: 20191223–5129.
Comments Due: 5 p.m. ET 1/13/20.

Docket Numbers: ER20–679–000.
Applicants: Equilon Enterprises LLC.
Description: § 205(d) Rate Filing: Request for Cat. 1 Seller Status in the NW Region & Revised MBR Tariff to be effective. 12/24/2019.
Filed Date: 12/23/19.
Accession Number: 20191223–5183.
Comments Due: 5 p.m. ET 1/13/20.

Docket Numbers: ER20–680–000.
Applicants: AEP Texas Inc.
Description: § 205(d) Rate Filing: AEPTX-Taylor EC-Golden Spread EC Interconnection Agreement 4th A&R to be effective 3/13/2019.
Filed Date: 12/23/19.
Accession Number: 20191223–5185.
Comments Due: 5 p.m. ET 1/13/20.

Docket Numbers: ER20–681–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Resubmittal of Tri-State's Market-Based Rate Tariff to be effective 3/23/2020.
Filed Date: 12/23/19.
Accession Number: 20191223–5192.
Comments Due: 5 p.m. ET 1/13/20.

Docket Numbers: ER20–682–000.
Applicants: Thermo Cogeneration Partnership, L.P.
Description: § 205(d) Rate Filing: Resubmittal of Thermo Cogeneration Market-Based Rate to be effective 3/23/2020.
Filed Date: 12/23/19.
Accession Number: 20191223–5196.
Comments Due: 5 p.m. ET 1/13/20.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF20–424–000.
Applicants: Regents of the University of Minnesota.
Description: Form 556 of Regents of the University of Minnesota [South East Plant].
Filed Date: 12/20/19.
Accession Number: 20191220–5409.
Comments Due: Non-Applicable.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 23, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–28254 Filed 12–30–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–26–000]

Notice of Request Under Blanket Authorization; Dominion Energy Transmission, Inc.

Take notice that on December 16, 2019, Dominion Energy Transmission, Inc, 120 Tredegar Street, Richmond, Virginia 23219, filed in Docket No. CP20–26–000 a prior notice request pursuant to sections 157.205, 157.213 and 157.216 of the Commission's regulations, seeking authorization to abandon, reconfigure, and relocate certain natural gas storage wells and associated pipelines within its Bridgeport Storage Field due to a proposed mixed-use development in Bridgeport, Harrison County, West Virginia, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Kenan W. Carioti, Regulatory & Certificates Analyst III, Dominion Energy Transmission, Inc., 707 East Main Street, Richmond, Virginia 23219, by phone at 804–771–4018, or by email are *Kenan.W.Carioti@DominionEnergy.com.*

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, and will be notified of any meetings associated with the Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commenters, will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 3 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Dated: December 23, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–28258 Filed 12–30–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15009–000]

Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications; Renewable Energy Aggregators

On October 2, 2019, Renewable Energy Aggregators filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the JD Sky Pumped Storage Hydro Project to be located in Maricopa County, Arizona. Renewable Energy Aggregators subsequently amended its application on October 11, 2019. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or

otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) An upper reservoir having a total storage capacity of 13,900 acre feet with a crest elevation of 3,050 feet mean sea level (msl), a maximum pool elevation of 3,040 feet msl, and a surface area of 150 acres; (2) a lower reservoir having a total storage capacity of 13,900 acre feet with a crest elevation 1,080 feet msl, a maximum pool elevation of 1,800 feet msl, and a surface area of 290 acres; (3) two 19-foot-diameter, 12,160-foot-long penstocks and two 21-foot-diameter, 3,00-foot-long tailraces; (4) a 750-foot-long, 175-foot-high, 70-foot-wide containing as many as four advanced ternary pumped storage single runner units with a total capacity of 800 megawatts; (5) twin circuit 500-kilovolt, 40-mile-long transmission lines that would connect to an existing transmission line owned by the Arizona Public Service Company or Salt River Project [1] or extend to an interconnect at the Hassayampa or Palo Verde substations; and (6) appurtenant facilities. Initial fill and makeup water would be acquired from the Colorado River region and conveyed to the project via the existing Central Arizona Project aqueduct. The estimated annual generation of the Project would be 311,000 megawatt hours.

Applicant Contact: Mr. Adam Rousselle, Renewable Energy Aggregators, 2113 Middle Street Suite 201, Sullivans Island, South Carolina 29482; phone: (267) 254–6107.

FERC Contact: Benjamin Mann; Email: *benjamin.mann@ferc.gov;* phone: (202) 502–8127.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications 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–15009–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–15009) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: December 23, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–28262 Filed 12–30–19; 8:45 am]

BILLING CODE 6717–01–P

[1] Salt River Project is a not-for-profit water and energy company that provides water and power to more than 2 million people living in central Arizona.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14995–000]

Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications; Pumped Hydro Storage, LLC

On May 14, 2019, Pumped Hydro Storage, LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the San Francisco River Pumped Storage Project to be located on the San Francisco River in Greenlee County, Arizona and Catron County, New Mexico. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) A new 180-foot-high, 3,000-foot-long upper dam impounding a 200-acre reservoir; (2) a new 200-foot-high, 650-foot-long lower dam impounding a 900-acre reservoir; (3) two new 12,000-foot-long, 32-foot-diameter penstocks; (4) a new reinforced concrete powerhouse containing five 250-megawatt turbine-generator units, for a total installed capacity of 1,250 megawatts; (5) a new 1-mile-long, 345 kilovolt transmission line; and (6) appurtenant facilities. The proposed project would have an average annual generation of 3,400 gigawatt-hours.

Applicant Contact: Steve Irwin, Pumped Hydro Storage, LLC, 6514 S 41st Lane, Phoenix, AZ 85041; phone: (602) 696–3608.

FERC Contact: Tim Konnert; phone: (202) 502–6359.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications 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–14995–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14995) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: December 23, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–28256 Filed 12–30–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL20–14–000]

Notice of Petition for Declaratory Order; Xcel Energy Services Inc.

Take notice that on December 20, 2019, pursuant to Rule 207(a)(2) of the

Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207 (2019), Xcel Energy Services Inc., on behalf of Public Service Company of Colorado (PSCo or Petitioner), filed a petition for a declaratory order requesting that the Commission declare: (1) Holy Cross Electric Association, Inc.'s (Holy Cross) demand for firm curtailment service for the Economy Energy resources is inconsistent with the Power Supply Agreement (PSA); (2) Holy Cross' demand for firm curtailment service is inconsistent with the Operating Agreement; (3) Holy Cross' demand for firm curtailment service is inconsistent with the Transmission Integration and Equalization (TIE) Agreement; and (4) PSCo is not obligated to process Holy Cross' requests for firm service under the TIE Agreement, as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene, or protest must serve a copy of that document on the Petitioners.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on January 21, 2020.

Dated: December 23, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–28259 Filed 12–30–19; 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:

Docket Number: PR20–6–001.
Applicants: Pelico Pipeline, LLC.
Description: Tariff filing per 284.123(b),(e)+(g): Pelico Pipeline, LLC Revised SOC Effective February 1, 2020 to be effective 2/1/2020.
Filed Date: 12/20/19.
Accession Number: 201912205021.
Comments Due: 5 p.m. ET 1/10/20.
284.123(g) Protests Due: 5 p.m. ET 1/10/20.

Docket Number: PR20–7–001.
Applicants: Regency Intrastate Gas LP.
Description: Tariff filing per 284.123(b),(e)+(g): Regency Intrastate Gas LP Revised SOC Effective February 1, 2020 to be effective 2/1/2020.
Filed Date: 12/20/19.
Accession Number: 201912205027.
Comments Due: 5 p.m. ET 1/10/20.
284.123(g) Protests Due: 5 p.m. ET 1/10/20.

Docket Numbers: RP19–63–001.
Applicants: East Tennessee Natural Gas, LLC.
Description: Report Filing: ETNG RP19–63 Refund Report_Final.
Filed Date: 12/13/19.
Accession Number: 20191213–5221.
Comments Due: 5 p.m. ET 12/27/19.

Docket Numbers: RP19–423–002.
Applicants: Tallgrass Interstate Gas Transmission, LLC.
Description: Compliance filing Rate Case Settlement RP19–423 et al. to be effective 6/1/2019.
Filed Date: 12/17/19.
Accession Number: 20191217–5134.
Comments Due: 5 p.m. ET 12/30/19.

Docket Numbers: RP18–369–003.
Applicants: Sea Robin Pipeline Company, LLC.
Description: Compliance filing First Annual Net Retrograde Filing on 12/19/19.
Filed Date: 12/19/19.
Accession Number: 20191219–5095.
Comments Due: 5 p.m. ET 12/27/19.

Docket Numbers: RP20–315–001.
Applicants: Equitrans, L.P.
Description: Tariff Amendment: Equitrans Clean-Up Filing—December 2019 Clarification to be effective 1/5/2020.
Filed Date: 12/19/19.
Accession Number: 20191219–5023.
Comments Due: 5 p.m. ET 12/27/19.

Docket Numbers: RP19–1340–002.
Applicants: Viking Gas Transmission Company.
Description: Compliance filing Motion to Place Suspended Revised Tariff Record into Effect to be effective 1/1/2020.
Filed Date: 12/20/19.
Accession Number: 20191220–5337.
Comments Due: 5 p.m. ET 1/2/20.

Docket Numbers: RP20–232–001.
Applicants: Dominion Energy Cove Point LNG, LP.
Description: Compliance filing DECP—RP20–232 Compliance Filing to be effective 12/15/2019.
Filed Date: 12/20/19.
Accession Number: 20191220–5162.
Comments Due: 5 p.m. ET 1/2/20.

Docket Numbers: RP20–309–001.
Applicants: Northwest Pipeline LLC.
Description: Tariff Amendment: Amended Miscellaneous and Housekeeping Filing—Fall 2019 to be effective 1/3/2020.
Filed Date: 12/20/19.
Accession Number: 20191220–5306.
Comments Due: 5 p.m. ET 1/2/20.

Docket Numbers: RP20–351–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rate—Chevron 911109 release eff 1–1–2020 to be effective 1/1/2020.
Filed Date: 12/20/19.
Accession Number: 20191220–5001.
Comments Due: 5 p.m. ET 1/2/20.

Docket Numbers: RP20–352–000.
Applicants: WBI Energy Transmission, Inc.
Description: § 4(d) Rate Filing: 2019 Negotiated & Non-Conforming SA—Demick's Lake II to be effective 2/1/2020.
Filed Date: 12/20/19.
Accession Number: 20191220–5002.
Comments Due: 5 p.m. ET 1/2/20.

Docket Numbers: RP20–353–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) Rate Filing: 122019 Negotiated Rates—Castleton Commodities Merchant Trading L.P. H–4010–89 to be effective 12/19/2019.
Filed Date: 12/20/19.
Accession Number: 20191220–5004.
Comments Due: 5 p.m. ET 1/2/20.

Docket Numbers: RP20–354–000.
Applicants: Texas Eastern Transmission, LP.

Description: § 4(d) Rate Filing: Negotiated Rate—Colonial 911723 eff 12–21–19 to be effective 12/21/2019.
Filed Date: 12/20/19.
Accession Number: 20191220–5014.
Comments Due: 5 p.m. ET 1/2/20.

Docket Numbers: RP20–355–000.
Applicants: Kern River Gas Transmission Company.
Description: § 4(d) Rate Filing: 2019 Pro Forma Agreements to be effective 2/1/2020.
Filed Date: 12/20/19.
Accession Number: 20191220–5016.
Comments Due: 5 p.m. ET 1/2/20.

Docket Numbers: RP20–356–000.
Applicants: Adelphia Gateway, LLC.
Description: § 4(d) Rate Filing: Adelphia Tariff Compliance filing (12–20–19) to be effective 1/3/2020.
Filed Date: 12/20/19.
Accession Number: 20191220–5331.
Comments Due: 5 p.m. ET 12/27/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 23, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–28257 Filed 12–30–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER18–2362–000.
Applicants: NTE Ohio, LLC.
Description: Report Filing: Refund report to 3 to be effective 9/1/2018.
Filed Date: 12/17/19.
Accession Number: 20191217–5192.
Comments Due: 5 p.m. ET 1/7/20.

Docket Numbers: ER19–38–004.
Applicants: Fairless Energy, L.L.C.
Description: Report Filing: Refund report to be effective N/A.
Filed Date: 12/17/19.
Accession Number: 20191217–5097.
Comments Due: 5 p.m. ET 1/7/20.

Docket Numbers: ER19–1077–001.
Applicants: Wildcat Wind Farm I, LLC.
Description: Report Filing: Wildcat Wind Farm I, Docket No. ER19–1077–000 Refund Report to be effective N/A.
Filed Date: 12/17/19.
Accession Number: 20191217–5026.
Comments Due: 5 p.m. ET 1/7/20.

Docket Numbers: ER19–2845–001.
Applicants: Southwest Power Pool, Inc.
Description: Tariff Amendment: Deficiency Response in ER19–2845–Revisions to Require PMUs to be effective 11/20/2019.
Filed Date: 12/16/19.
Accession Number: 20191216–5120.
Comments Due: 5 p.m. ET 1/6/20.

Docket Numbers: ER20–608–000.
Applicants: Bear Valley Electric Service, Inc.
Description: Baseline eTariff Filing: MBR Application and Requests for Waivers and Blanket Authority to be effective 1/1/2020.
Filed Date: 12/16/19.
Accession Number: 20191216–5138.
Comments Due: 5 p.m. ET 1/6/20.

Docket Numbers: ER20–609–000.
Applicants: Ohio Power Company, AEP Ohio Transmission Company, Inc., PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: AEP submits ILDSA, SA No. 1336 and 1 Facilities Agreement to be effective 2/14/2020.
Filed Date: 12/16/19.
Accession Number: 20191216–5155.
Comments Due: 5 p.m. ET 1/6/20.

Docket Numbers: ER20–610–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3505R1 ENGIE Energy Marketing NA & Sunflower Meter Agent Agr to be effective 12/1/2019.
Filed Date: 12/17/19.
Accession Number: 20191217–5000.
Comments Due: 5 p.m. ET 1/7/20.

Docket Numbers: ER20–611–000.
Applicants: Algonquin SKIC 20 Solar, LLC.
Description: § 205(d) Rate Filing: Shared Facilities Agreement to be effective 12/18/2019.
Filed Date: 12/17/19.
Accession Number: 20191217–5058.
Comments Due: 5 p.m. ET 1/7/20.

Docket Numbers: ER20–612–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–12–17_SA 3392 Entergy Arkansas-New Madrid Solar GIA (J944) to be effective 12/3/2019.
Filed Date: 12/17/19.
Accession Number: 20191217–5090.
Comments Due: 5 p.m. ET 1/7/20.

Docket Numbers: ER20–613–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–12–17_SA 3394 UEC-Blue Bird Solar GIA (J817) to be effective 12/3/2019.
Filed Date: 12/17/19.
Accession Number: 20191217–5094.
Comments Due: 5 p.m. ET 1/7/20.

Docket Numbers: ER20–614–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: Irwin Solar I LGIA Filing to be effective 12/4/2019.
Filed Date: 12/17/19.
Accession Number: 20191217–5099.
Comments Due: 5 p.m. ET 1/7/20.

Docket Numbers: ER20–615–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–12–17_SA 3393 Ameren IL-Orion Renewable Resources GIA (J826) to be effective 12/3/2019.
Filed Date: 12/17/19.
Accession Number: 20191217–5100.
Comments Due: 5 p.m. ET 1/7/20.

Docket Numbers: ER20–616–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: First Revised ISA, SA No. 3878 and Original ICSA, SA No. 5532; Queue No. AE2–064 to be effective 11/18/2019.
Filed Date: 12/17/19.
Accession Number: 20191217–5157.
Comments Due: 5 p.m. ET 1/7/20.

Docket Numbers: ER20–617–000.
Applicants: New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: NYISO 205 tariff revisions of Cost Containment in PPTPP to be effective 2/16/2020.
Filed Date: 12/17/19.
Accession Number: 20191217–5158.
Comments Due: 5 p.m. ET 1/7/20.

Docket Numbers: ER20–618–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to WMPA, SA No. 3355; Queue No. W3–044 (amend) to be effective 2/4/2014.
Filed Date: 12/17/19.

Accession Number: 20191217–5171.
Comments Due: 5 p.m. ET 1/7/20.

Docket Numbers: ER20–619–000.
Applicants: ISO New England Inc.
Description: Informational Filing of Contract of ISO New England Inc.
Filed Date: 12/17/19.
Accession Number: 20191217–5178.
Comments Due: 5 p.m. ET 1/7/20.

Docket Numbers: ER20–620–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to Service Agreement No. 5314; Queue No. AE1–081 (consent) to be effective 2/17/2019.
Filed Date: 12/17/19.
Accession Number: 20191217–5193.
Comments Due: 5 p.m. ET 1/7/20.

Docket Numbers: ER20–621–000.
Applicants: MP2 Energy LLC.
Description: § 205(d) Rate Filing: Notice of Non-Material Change in Status & SE Change in Cat. Seller Status to be effective 12/18/2019.
Filed Date: 12/17/19.
Accession Number: 20191217–5194.
Comments Due: 5 p.m. ET 1/7/20.

Docket Numbers: ER20–622–000.
Applicants: MP2 Energy NE LLC.
Description: § 205(d) Rate Filing: Notice of Non-Material Change in Status & SE Change in Cat. Seller Status to be effective 12/18/2019.
Filed Date: 12/17/19.
Accession Number: 20191217–5195.
Comments Due: 5 p.m. ET 1/7/20.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 17, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–28207 Filed 12–30–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3273–024]

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests; Chittenden Falls Hydropower, Inc.

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.:* 3273–024.

c. *Date filed:* May 31, 2019.

d. *Applicant:* Chittenden Falls Hydropower, Inc. (Chittenden Falls Hydro).

e. *Name of Project:* Chittenden Falls Hydropower Project.

f. *Location:* On Kinderhook Creek, near the Town of Stockport, Columbia County, New York. The project does not occupy federal land.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mark Boumansour, Chief Operating Officer, Gravity Renewables, Inc., 1401 Walnut Street, Suite 420, Boulder, CO 80302; (303) 440–3378; *mark@gravityrenewables.com* and/or Celeste N. Fay, Regulatory Manager, Gravity Renewables, Inc., 5 Dartmouth Drive, Suite 104, Auburn, NH 03032; (413) 262–9466; *celeste@gravityrenewables.com.*

i. *FERC Contact:* Monir Chowdhury at (202) 502–6736 or *monir.chowdhury@ferc.gov.*

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* 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–3273–024.

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, but is not ready for environmental analysis at this time.

l. The existing Chittenden Falls Hydropower Project consists of: (1) An approximately 4-foot-high, 320-foot-long concrete gravity dam, topped with 2-foot-high wooden flashboards, and having a dam crest elevation of 59.6 feet National Geodetic Vertical Datum of 1929 (NGVD29); (2) a reservoir with a surface area of about 18 acres and a storage capacity of 63 acre-feet at a normal pool elevation of 61.6 feet NGVD29; (3) an 8-foot-wide, 22-foot-long intake structure on the east side of the dam connecting to an 8-foot-wide, 118-foot-long concrete and wooden power canal; (4) a 7.5-foot-diameter, 45-foot-long steel penstock that conveys water from the power canal to a powerhouse on the east side of the dam containing two turbine-generator units with a total rated capacity of 453 kilowatts (kW); (5) an 8-foot-wide, 10-foot-long intake structure on the west side of the dam connecting to a 6-foot-diameter, 62-foot-long steel penstock; (6) a powerhouse on the west side of the dam containing a single turbine-generator unit with a rated capacity of 300 kW; (7) two 480-volt, 40-foot-long generator leads connecting the east powerhouse to a transformer yard and a 2,300-volt, 400-foot-long generator lead connecting the west powerhouse to the transformer yard; and (8) appurtenant facilities.

The Chittenden Falls Project is operated in a run-of-river mode with an estimated average annual generation of 2,300 megawatt-hours between 2012 and 2018. Chittenden Falls Hydro proposes to continue to operate the project in run-of-river mode.

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 the address in item h above.

n. 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. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (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. 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.

p. Updated procedural schedule and final amendments: The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Scoping Document for comments	December 2019.
Request Additional Information (if necessary)	February 2020.
Issue Scoping Document 2 (if necessary)	March 2020.
Issue Notice of Ready for Environmental Analysis	March 2020.
Commission issues EA or draft EA	September 2020.
Comments on EA or draft EA	October 2020.
Commission issues final EA (If draft EA Issued)	January 2021.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: December 23, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–28261 Filed 12–30–19; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL—FRL–10003–68–OA]

Notification of a Public Meeting of the Chartered Science Advisory Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces a public meeting of the chartered SAB to discuss its reviews of the following proposed rules: (1) National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Reconsideration of Supplemental Finding and Residual Risk and Technology Review; (2) The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks; (3) Strengthening Transparency in Regulatory Science; and (4) Revised Definition of ''Waters of the United States.''

DATES: The public meeting of the chartered Science Advisory Board will be held on Friday, January 17, 2020, from 1:00 p.m. to 5:00 p.m. (Eastern Time), Tuesday, January 21, 2020, from 1:00 to 5:00 p.m. (Eastern Time), Wednesday, January 22, from 1:00 p.m. to 5:00 p.m. (Eastern Time), and Friday, January 24, 2020, from 1:00 p.m. to 5:00 p.m. (Eastern Time). The chartered SAB will hear oral public comments on January 17, 2020.

ADDRESSES: The meeting will be conducted by telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning the public meeting may contact Dr. Thomas Armitage, Designated Federal Officer (DFO), EPA Science Advisory Board (1400R), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; via telephone/voice mail (202) 564–2155, or email at *armitage.thomas@epa.gov.* General information concerning the SAB can be found on the EPA website at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

Background: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act (ERDDAA), codified at 42 U.S.C. 4365, to provide independent scientific and technical advice to the Administrator on the scientific and technical basis for agency positions and regulations. The SAB is a Federal Advisory Committee chartered under the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to FACA and EPA policy, notice is hereby given that the SAB will hold a public meeting to discuss its reviews of the scientific and technical basis of four proposed rules. Under the SAB's authorizing statute, the SAB ''may make available to the Administrator, within the time specified by the Administrator, its advice and comments on the adequacy of the scientific and technical basis'' of proposed rules. At a public meeting held on June 5–6, 2019, the SAB discussed whether to review the scientific and technical basis of major EPA actions in the Spring 2018 regulatory agenda. The SAB decided to provide advice and comments on the scientific and technical basis of the following proposed rules: (1) National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units—Reconsideration of Supplemental Finding and Residual Risk and Technology Review; (2) The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks; (3) Strengthening Transparency in Regulatory Science; and (4) Revised Definition of ''Waters of the United States.'' The purpose of the meeting described in this notice is to discuss draft reports developed by SAB workgroups.

Availability of Meeting Materials: Prior to the meeting, an agenda and other meeting materials will be placed on the SAB website at *http://epa.gov/sab.*

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office.

Federal advisory committees and panels, including scientific advisory committees, provide independent advice to the EPA. Members of the public can submit relevant comments pertaining to the committee's charge or meeting materials. Input from the public to the SAB will have the most impact if it provides specific scientific or technical information or analysis for the SAB to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should contact the DFO directly.

Oral Statements: In general, individuals or groups requesting an oral presentation at a public teleconference will be limited to three minutes. Persons interested in providing oral statements on January 17, 2020, should contact Dr. Thomas Armitage, DFO, in writing (preferably via email) at the contact information noted above by January 10, 2020, to be placed on the list of registered speakers.

Written Statements: Written statements will be accepted throughout the advisory process; however, for timely consideration by SAB members, statements should be received in the SAB Staff Office by January 10, 2020. Written statements should be supplied to the DFO at the contact information above via email (preferred) or in hard copy with original signature. Submitters are requested to provide a signed and unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its websites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB website. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Armitage at the phone number or email address noted above, preferably at least ten days prior to the meeting, to give the EPA as much time as possible to process your request.

Dated: December 16, 2019.

Khanna Johnston,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2019–28012 Filed 12–30–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 19–1283; FRS 16356]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission released a public notice announcing the meeting of the North American Numbering Council (NANC).

DATES: Monday, January 13, 2020 (Room TW–C305), and, Thursday, February 13, 2020 (Room 5–B516). The meetings will come to order at 2:00 p.m.

ADDRESSES: Federal Communications Commission, 445 12th Street SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Marilyn Jones, Designated Federal Officer of the NANC, at *marilyn.jones@fcc.gov.,* or (202) 418–2357; Jordan Reth, Alternate DFO, at *jordan.reth@fcc.gov,* or 202–418–1418; or Carmell Weathers, Special Assistant to the DFO at *carmell.weathers@fcc.gov,* or (202) 418–2325. The fax number is: (202) 418–1413. The TTY number is: (202) 418–0484. More information about the NANC is available at *https://www.fcc.gov/about-fcc/advisory-committees/general/north-american-numbering-council.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document in CC Docket No. 92–237, DA 19–1283, released on December 18, 2019. The complete text of this document is available for public inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW, Room CY–A257, Washington, DC 20554. It is available on the Commission's website at *http://www.fcc.gov.*

The NANC meeting is open to the public and will be conducted by conference call for those members unable to attend in person. The Commission will also provide audio coverage of the meeting. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Consumer and Governmental Affairs Bureau @(202) 418–0530 (voice), (202) 418–0432 (TTY). Such requests should include a detailed description of the accommodation needed. In addition, please include a way for the FCC to contact the requester if more information is needed to fill the request. Please allow at least five days advance notice for accommodation requests; last minute requests will be accepted but may not be possible to accommodate.

Members of the public may submit comments to the NANC in the FCC's Electronic Comment Filing System, ECFS, at *www.fcc.gov/ecfs.* Comments to the NANC should be filed in CC Docket No. 92–237.

Requests to make an oral statement or provide written comments to the NANC should be sent to Carmell Weathers, Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, Portals II, 445 12th Street SW, Room 5–C162, Washington, DC 20554 or emailed to *Carmell.Weathers@fcc.gov.*

Proposed Agenda: The primary agenda for the January meeting will be for the NANC to consider and to vote on the recommended technical requirements document for the Reassigned Numbers Database. The Commission established the Reassigned Numbers Database in December 2018. Advanced Methods to Target and Eliminate Unlawful Robocalls, Second Report and Order, 33 FCC Rcd 12024 (2018). At the February meeting, the NANC will consider and vote on the recommendations for the fee structure and pricing for users of the Reassigned Numbers Database. This agenda may be modified at the discretion of the NANC Chair and the Designated Federal Officer (DFO).

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2019–28272 Filed 12–30–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0678 and OMB 3060–1167; FRS 16372]

Information Collections Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to

take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before January 30, 2020. If you anticipate that you will be submitting comments but find it difficult to do so with the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@OMB.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control No.: 3060–0678.

Title: Part 25 of the Commission's Rules Governing the Licensing of, and Spectrum Usage by, Satellite Network Stations and Space Stations.

Form No: FCC Form 312, FCC Form 312–EZ, FCC Form 312–R and Schedules A, B and S.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities and Not-for-profit institutions.

Number of Respondents: 6,524 respondents; 6,573 responses.

Estimated Time per Response: 0.5–80 hours.

Frequency of Response: On occasion, one time, and annual reporting requirements; third-party disclosure requirement; recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. The Commission has statutory authority for the information collection requirements under 47 U.S.C. 154, 301, 302, 303, 307, 309, 310, 319, 332, 605, and 721.

Total Annual Burden: 44,992 hours.

Total Annual Cost: $16,612,586.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality pertaining to the information collection requirements in this collection.

Needs and Uses: On August 2, 2019, the Commission released a Report and Order, FCC 19–81, in IB Docket No. 18–86, titled ''Streamlining Licensing Procedures for Small Satellites'' (Small Satellite Report and Order). In this Report and Order, the Commission adopted a new alternative, optional licensing process for small satellites and spacecraft, called the ''Part 25 streamlined small satellite process.'' This new process allows qualifying applicants for small satellites and spacecraft to take advantage of an easier application process, a lower application fee, and a shorter timeline for review than currently exists for applicants under the Commission's existing Part 25 satellite licensing rules. The Commission limited the regulatory burdens borne by applicants, while promoting orbital debris mitigation and efficient use of spectrum. The Commission's action supports and encourages the increasing innovation in the small satellite sector and helps to preserve U.S. leadership in space-based services and operations. This information collection will provide the Commission and the public with necessary information about the operations of this growing area of satellite operations. While this information collection represents an overall increase in the burden hours, the increase is due to an anticipated overall increase in number of applications as a result of additional applications being filed under the streamlined process adopted in the Small Satellite Report and Order. This information collection represents a decrease in the paperwork burdens for individual operators of non-geostationary orbit (NGSO) satellites who may now qualify for streamlined processing as small satellites, and serves the public interest by streamlining the collection of information and allowing the Commission to authorize small satellites and spacecraft under the new process established in the Report and Order.

Specifically, FCC 19–81 contains new or modified information collection requirements listed below:

(1) Space station application requirements for qualifying small satellites and small spacecraft have been specified in new sections 25.122 and 25.123, respectively. These new sections, including the certifications, incorporate some existing information requirements from other sections, but eliminate the need for small satellite and spacecraft applicants to provide much of the information that part 25 space station applicants would typically be required to provide in narrative format under section 25.114(d). The new or modified informational requirements in sections 25.122 and 25.123 are listed as follows:

a. For small satellite applications filed under section 25.122, a certification that the space stations will operate in non-geostationary orbit, or for small spacecraft applications filed under section 25.123, a certification that the space station(s) will operate and be disposed of beyond Earth's orbit.

b. A certification that the total in-orbit lifetime for any individual space station will be six years or less.

c. For small satellite applications filed under 25.122, a certification that the space station(s) will either be deployed at an orbital altitude of 600 km or below, or will maintain a propulsions system and have the ability to make collision avoidance and deorbit maneuvers using propulsion. This certification will not apply to small spacecraft applications filed under section 25.123.

d. A certification that each space station will be identifiable by a unique signal-based telemetry marker distinguishing it from other space stations or space objects.

e. A certification that the space station(s) will release no operational debris.

f. A certification that the space station operator has assessed and limited the probability of accidental explosions resulting from the conversion of energy sources on board the space station(s) into energy that fragments the spacecraft.

g. A certification that the probability of a collision between each space station and any other large object (10 centimeters or larger) during the orbital lifetime of the space station is 0.001 or less as calculated using current NASA software or other higher fidelity model.

h. For small satellite applications filed under section 25.122, a certification that the space station(s) will be disposed of through atmospheric re-entry, and that the probability of human casualty from portions of the spacecraft surviving re-entry and reaching the surface of the Earth is zero as calculated using current NASA software or higher fidelity models. This certification will not apply to small spacecraft applications filed under section 25.123.

i. A certification that operations of the space station(s) will be compatible with existing operations in the authorized frequency band(s) and will not materially constrain future space station entrants from using the authorized frequency bands.

j. A certification that the space station(s) can be commanded by command originating from the ground to immediately cease transmissions and the licensee will have the capability to eliminate harmful interference when required under the terms of the license or other applicable regulations.

k. A certification that each space station is 10 cm or larger in its smallest dimension.

l. For small satellite applications filed under section 25.122, a certification that each space station will have a mass of 180 kg or less, including any propellant. For small spacecraft applications filed under section 25.123, a certification that each space station will have a mass of 500 kg of less, including any propellant.

m. A description of means by which requested spectrum could be shared with both current and future operators (*e.g.,* how ephemeris data will be shared, antenna design, earth station geographic locations) thereby not materially constraining other operations in the requested frequency bands.

n. For space stations with any means of maneuverability, including both active and passive means, a description of the design and operation of maneuverability and deorbit systems, and a description of the anticipated evolution over time of the orbit of the proposed satellite or satellites.

o. In any instances where spacecraft capable of having crew aboard will be located at or below the deployment orbital altitude of the space station seeking a license, a description of the design and operational strategies that will be used to avoid in-orbit collision with such crewed spacecraft shall be furnished at the time of application. This narrative requirement will not apply to space stations that will operate beyond Earth's orbit.

p. A list of the FCC file numbers or call signs for any known applications or Commission grants related to the proposed operations (*e.g.,* experimental license grants, other space station or earth station applications or grants).

(2) The informational requirements listed in section 25.137 for requests for U.S.-market access through non-U.S.-licensed space stations were also modified to refer to sections 25.122 and 25.123, for those applicants seeking U.S. market access under the small satellite or spacecraft process.

This collection is also used by staff in carrying out United States treaty obligations under the World Trade Organization (WTO) Basic Telecom Agreement. The information collected is used for the practical and necessary purposes of assessing the legal, technical, and other qualifications of applicants; determining compliance by applicants, licensees, and other grantees with Commission rules and the terms and conditions of their grants; and concluding whether, and under what conditions, grant of an authorization will serve the public interest, convenience, and necessity.

As technology advances and new spectrum is allocated for satellite use, applicants for satellite service will continue to submit the information required in 47 CFR part 25 of the Commission's rules. Without such information, the Commission could not determine whether to permit respondents to provide telecommunication services in the United States. Therefore, the Commission would be unable to fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended, and the obligations imposed on parties to the WTO Basic Telecom Agreement.

OMB Control Number: 3060–1167.

Title: Accessible Telecommunications and Advanced Communications Services and Equipment.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households; business or other for-profit entities; not-for-profit institutions.

Number of Respondents and Responses: 3,541 respondents; 42,106 responses.

Estimated Time per Response: .50 hours (30 minutes) to 40 hours.

Frequency of Response: Annual, one time, and on occasion reporting requirements; recordkeeping requirement; third-party disclosure requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in sections 1–4, 255, 303(r), 403, 503, 716, 717, and 718 of the Communications Act, as amended, 47 U.S.C. 151–154, 255, 303(r), 403, 503, 617, 618, and 619.

Total Annual Burden: 120,999 hours.

Total Annual Cost: $17,800.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's system of records notice (SORN), FCC/CGB–1, ''Informal Complaints, Inquiries and Requests for Dispute Assistance,'' which became effective on September 24, 2014. In addition, upon the service of an informal or formal complaint, a service provider or equipment manufacturer must produce to the Commission, upon request, records covered by 47 CFR 14.31(a) of the Commission's rules that are directly relevant to the equipment or service that is the subject of such complaint and may assert a statutory request for confidentiality for these records. All other information submitted to the Commission pursuant to Subpart D of Part 14 of the Commission's rules or to any other request by the Commission may be submitted pursuant to a request for confidentiality in accordance with 47 CFR 0.459 of the Commission's rules.

Privacy Impact Assessment: The FCC completed a Privacy Impact Assessment (PIA) on June 28, 2007. The PIA may be reviewed at *https://www.fcc.gov/general/privacy-act-information.* The FCC is in the process of updating the PIA to incorporate various revisions made to the SORN.

Needs and Uses: In 2011, in document FCC 11–151, the FCC adopted rules to implement sections 716 and 717 of the Communications Act of 1934 (the Act), as amended, which were added to the Act by the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA). See Public Law 111–260, 104. Section 716 of the Act requires providers of advanced communications services and manufacturers of equipment used for advanced communications services to make their services and equipment accessible to individuals with disabilities, unless doing so is not achievable. 47 U.S.C. 617. Section 717 of the Act established new recordkeeping requirements and enforcement procedures for service providers and equipment manufacturers that are subject to sections 255, 716, and 718 of the Act. 47 U.S.C. 618. Section 255 of the Act requires telecommunications and interconnected VoIP services and equipment to be accessible to individuals with disabilities, if readily achievable. 47 U.S.C. 255. Section 718 of the Act requires internet browsers built into mobile phones to be accessible to and usable by individuals who are blind or have a visual impairment, unless doing so is not achievable. 47 U.S.C. 619.

In document FCC 11–151, the Commission adopted rules relating to the following:

(a) Service providers and equipment manufacturers that are subject to sections 255, 716, and 718 of the Act must ensure that the information and documentation that they provide is accessible to individuals with disabilities.

(b) Service providers and equipment manufacturers may seek waivers from the accessibility obligations of section 716 of the Act for services or equipment that are designed for multiple purposes, including advanced communications services, but are designed primarily for purposes other than using advanced communications services.

(c) Service providers and equipment manufacturers that are subject to sections 255, 716, and 718 of the Act must maintain records of their efforts to implement those sections.

(d) Service providers and equipment manufacturers that are subject to sections 255, 716, and 718 of the Act must certify annually to the Commission that records are kept in accordance with the recordkeeping requirements. The certification must include contact details of the person(s) authorized to resolve accessibility complaints and the agent designated for service of process.

(e) The Commission established procedures to facilitate the filing of formal and informal complaints alleging violations of sections 255, 716, or 718 of the Act. Those procedures include a nondiscretionary pre-filing notice procedure to facilitate dispute resolution, that is, as a prerequisite to filing an informal complaint, complainants must first request dispute assistance from the Consumer and Governmental Affairs Bureau's Disability Rights Office.

In 2013, in document FCC 13–57, the FCC adopted rules to implement section 718 of the Act.

In 2015, in document FCC 15–24, the FCC reclassified broadband internet access service (BIAS) as a telecommunications service that is subject to the Commission's regulatory authority under Title II of the Act and applying section 255 of the Act and the Commission's implementing rules to providers of BIAS and manufacturers of equipment used for BIAS. In 2017, in document FCC 17–166, the Commission reinstated the information service classification of BIAS.

Therefore, the Commission extracted those burdens from the collection found in OMB control number 3060–1167.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer.

[FR Doc. 2019–28183 Filed 12–30–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0787; FRS 16360]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communication Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before March 2, 2020. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0787.

Title: Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers, CC Docket No. 94–129, CG Docket 17–169.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or household; Business or other for-profit; State, Local or Tribal Government.

Number of Respondents and Responses: 4,160 respondents; 20,920 responses.

Estimated Time per Response: 30 minutes (.50 hours) to 10 hours.

Frequency of Response: Recordkeeping requirement; Biennial, on occasion and one-time reporting requirements; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory

authority for the information collection requirements is found at Sec. 258 [47 U.S.C. 258] Illegal Changes In Subscriber Carrier Selections, Public Law 104–104, 110 Stat. 56.

Total Annual Burden: 87,173 hours.

Total Annual Cost: 26,300,00.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's system of records notice (SORN), FCC/CGB–1, ''Informal Complaints, Inquiries, and Requests for Dispute Assistance.'' As required by the Privacy Act, 5 U.S.C. 552a, the Commission also published a SORN, FCC/CGB–1 ''Informal Complaints, Inquiries, and Requests for Dispute Assistance'', in the **Federal Register** on August 15, 2014 (79 FR 48152) which became effective on September 24, 2014.

Privacy Impact Assessment: The FCC completed a Privacy Impact Assessment (PIA) on June 28, 2007. It may be reviewed at *http://www.fcc.gov/omd/privacyact/Privacy-Impact-Assessment.html.* The Commission is in the process of updating the PIA to incorporate various revisions to it as a result of revisions to the SORN.

Needs and Uses: Section 258 of the Telecommunications Act of 1996 (1996 Act) directed the Commission to prescribe rules to prevent the unauthorized change by telecommunications carriers of consumers' selections of telecommunications service providers (slamming). On March 17, 2003, the FCC released the *Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking,* CC Docket No. 94–129, FCC 03–42 (*Third Order on Reconsideration*), in which the Commission revised and clarified certain rules to implement section 258 of the 1996 Act. On May 23, 2003, the Commission released an *Order* (CC Docket No. 94–129, FCC 03–116) clarifying certain aspects of the *Third Order on Reconsideration.* On January 9, 2008, the Commission released the *Fourth Report and Order,* CC Docket No. 94–129, FCC 07–223, revising its requirements concerning verification of a consumer's intent to switch carriers.

The *Fourth Report and Order* modified the information collection requirements contained in § 64.1120(c)(3)(iii) of the Commission's rules to provide for verifications to elicit ''confirmation that the person on the call understands that a carrier change, not an upgrade to existing service, bill consolidation, or any other misleading description of the transaction, is being authorized.''

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer.

[FR Doc. 2019–28185 Filed 12–30–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0754; FRS 16357]

Information Collection Approved by the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number, and no person is required to respond to a collection of information unless it displays a currently valid control number. Comments concerning the accuracy of the burden estimates and any suggestions for reducing the burden should be directed to the person listed below.

FOR FURTHER INFORMATION CONTACT: Kathy Berthot, Policy Division, Media Bureau, at (202) 418–7454, or email: *Kathy.Berthot@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0754.

OMB Approval Date: 12/18/2019.

Expiration Date: 12/31/2022.

Title: FCC Form 2100, Application for Media Bureau Audio and Video Service Authorization, Schedule H.

Form Number: FCC Form 2100, Schedule H.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit entities.

Number of Respondents: 1,758 respondents; 1,758 responses.

Estimated Time per Response: 10 hours.

Frequency of Response: Recordkeeping requirement: Annual reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for these collections is contained in Sections 54(i) and 303 of the Communications Act of 1934, as amended.

Total Annual Burden: 17,580 hours.

Total Annual Cost: $1,054,800.

Privacy Impact Assessment: No impact.

Nature and Extent of Confidentiality: There is no need for confidentiality with respect to this collection of information.

Needs and Uses: Commercial full-power and Class A television broadcast stations are required to file FCC Form 2100, Schedule H (formerly FCC Form 398) (Children's Television Programming Report) within 30 days after the end of each calendar year. FCC Form 2100, Schedule H is a standardized form that: (a) Provides a consistent format for reporting the children's educational television programming aired by licensees to meet their obligation under the Children's Television Act of 1990 (CTA), and (b) facilitates efforts by the public and the FCC to monitor compliance with the CTA.

Commercial full-power and Class A television stations are required to complete FCC Form 2100, Schedule H within 30 days after the end of each calendar year and file the form with the Commission. The Commission places the form in the station's online public inspection file maintained on the Commission's database (*www.fcc.gov*). Stations use FCC Form 2100, Schedule H to report, among other things, the Core Programming (*i.e.,* children's educational and informational programming) the station aired the previous calendar year. FCC Form 2100, Schedule H also includes a ''Preemption Report'' that must be completed for each Core Program that was preempted during the year. This ''Preemption Report'' requests information on the reason for the preemption, the date of each preemption, the reason for the preemption and, if the program was rescheduled, the date and time the program was re-aired.

On July 10, 2019, the Commission adopted a *Report and Order* in MB Docket Nos. 18–202 and 17–105, FCC 19–67, *In the Matter of Children's Television Programming Rules; Modernization of Media Regulation Initiative,* which modernizes the children's television programming rules in light of changes to the media landscape that have occurred since the rules were first adopted. Among other revisions, the *Report and Order* revises the children's television programming rules to expand the Core Programming hours to 6:00 a.m. to 10:00 p.m.; modify the safe harbor processing guidelines for determining compliance with the children's programming rules; require that broadcast stations air the substantial majority of their Core Programming on their primary program streams, but permit broadcast stations to

air up to 13 hours per quarter of regularly scheduled weekly programming on a multicast stream; eliminate the additional processing guideline applicable to stations that multicast; and modify the rules governing preemption of Core Programming. In addition, the *Report and Order* revises the children's television programming reporting requirements by requiring that Children's Television Programming Reports (FCC Form 2100, Schedule H) be filed on an annual rather than quarterly basis, within 30 days after the end of the calendar year; eliminating the requirements that the reports include information describing the educational and informational purpose of each Core Program aired during the current reporting period and each Core Program that the licensee expects to air during the next reporting period; eliminating the requirement to identify the program guide publishers who were sent information regarding the licensee's Core Programs; and streamlining the form by eliminating certain fields. The *Report and Order* also eliminates the requirement to publicize the Children's Television Programming Reports. The *Report and Order* directs the Media Bureau to make modifications to FCC Form 2100, Schedule H as needed to conform the form with the revisions to the children's programming rules, including the changes to the processing guidelines and preemption policies.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer.

[FR Doc. 2019–28181 Filed 12–30–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 201328.

Agreement Name: The TradeLens Agreement.

Parties: CMA CGM S.A.; Hapag-Lloyd AG; Maersk A/S; MSC Mediterranean Shipping Company S.A.; and Ocean Network Express Pte. Ltd.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The Agreement authorizes the parties to cooperate with respect to the provision of data to a blockchain-enabled, global trade digitized solution that will enable shippers, authorities and other stakeholders to exchange information on supply chain events and documents.

Proposed Effective Date: 2/6/2020.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/26452.

Dated: December 23, 2019.

Rachel Dickon,

Secretary.

[FR Doc. 2019–28180 Filed 12–30–19; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Notice.

SUMMARY: The FTC plans to ask the Office of Management and Budget (OMB) to extend for an additional three years the current Paperwork Reduction Act (PRA) clearance for information collection requirements contained in the FTC's Rule Governing Pre-sale Availability of Written Warranty Terms. The current clearance expires on April 30, 2020.

DATES: Comments must be received on or before March 2, 2020.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comments part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Pre-sale Availability Rule; PRA Comment: FTC File No. P072108'' on your comment, and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Christine M. Todaro, Attorney, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, (202) 326–3711.

SUPPLEMENTARY INFORMATION:

Proposed Information Collection Activities

Under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3520, federal agencies must get OMB approval for each collection of information they conduct, sponsor, or require. ''Collection of information'' means agency requests or requirements to submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the FTC's existing PRA clearance for the information collection requirements associated with the Commission's Rule Governing Pre-sale Availability of Written Warranty Terms, (the Pre-sale Availability Rule), 16 CFR 702 (OMB Control Number 3084–0112).

The Pre-sale Availability Rule, 16 CFR 702, is one of three rules [1] that the FTC issued as required by the Magnuson Moss Warranty Act, 15 U.S.C. 2301 *et seq.* (Warranty Act or Act).[2] The Pre-sale Availability Rule requires sellers and warrantors to make the text of any written warranty on a consumer product costing more than $15 available to the consumer before sale. Among other things, the Rule requires sellers to make the text of the warranty readily available either by (1) displaying it in close proximity to the product or (2) furnishing it on request and posting signs in prominent locations advising consumers that the warranty is available. The Rule requires warrantors to provide materials to enable sellers to comply with the Rule's requirements and also sets out the methods by which warranty information can be made available before the sale if the product is sold through catalogs, mail order, or door to door sales. In addition, in 2016, the FTC revised the Rule to allow warrantors to post warranty terms on internet websites if they also provide a non-internet based method for

[1] The other two rules relate to the information that must appear in a written warranty on a consumer product costing more than $15 if a warranty is offered and minimum standards for informal dispute settlement mechanisms that are incorporated into a written warranty.

[2] 40 FR 60168 (Dec. 31, 1975).

consumers to obtain the warranty terms and satisfy certain other conditions.[3] The revised Rule also allows certain sellers to display warranty terms pre-sale in an electronic format if the warrantor has used the online method of disseminating warranty terms.

Burden Statement

Total annual hours burden: 3,069,314.

In its 2016 submission to OMB, FTC staff estimated that the information collection burden of making the disclosures required by the Pre-sale Availability Rule was approximately 2,823,803 hours per year. Although there has been no change in the Rule's information collection requirements since 2016, staff has adjusted slightly downward its previous estimate of the number of manufacturers subject to the Rule based on recent Census data. From that, staff now estimates that there are approximately 742 large manufacturers and 30,287 small manufacturers subject to the Rule.[4] In addition, staff has adjusted slightly upward its previous estimate of number of retailers subject to the Rule based on recent Census data. There are now an estimated 8,628 large retailers and 566,549 small retailers impacted by the Rule.[5] These estimates likely overstate the number of manufacturers and retailers because some of the included manufacturers and retailers may make and sell products that are not covered by the Rule.

In September 2016, the FTC approved amendments to the Pre-sale Availability Rule, which became effective on October 17, 2016.[6] Under the amendments, warrantors may display warranty terms online and provide information to consumers to obtain those terms via non-internet means. The amendments also allow sellers to provide pre-sale warranty terms electronically or conventionally if the warrantor has chosen to display its warranty terms online. Sellers of warranted goods for which the warrantor has chosen the online method may incur a slightly increased burden because the seller will have to ensure it provides consumers a method of reviewing the warranty terms both prior to and at the point of sale. That burden, however, should be minimal, given that the warrantor will have to make the warranty terms available on an internet website, and given the provision requiring the warrantor to supply a hard copy of the warranty terms, promptly and free of charge, in response to a seller's or a consumer's request. In addition, any burden on sellers could be offset by sellers having additional flexibility to make pre-sale warranty terms available to consumers electronically.

Therefore, staff continues to estimate that large retailers spend an average of 20.8 hours per year and small retailers spend an average 4.8 hours per year to comply with the Rule. Accordingly, the total annual burden for retailers is approximately 2,898,897.6 hours ((8,628 large retailers × 20.8 burden hours) + (566,549 small retailers × 4.8 burden hours)). Staff also estimates that more manufacturers will provide retailers with warranty information in electronic form in fulfilling their obligations under the Rule and thus staff has adjusted the hour burden for manufacturers as it did in its previous submission to OMB. Applying a 20% reduction to its previous estimates, staff now assumes that large manufacturers spend an average of 21.5 hours per year and that small manufacturers spend an average of 5.1 hours per year to comply with the Rule. Accordingly, the total annual burden incurred by manufacturers is approximately 170,416.7 hours ((742 large manufacturers × 21.5 hours) + (30,287 small manufacturers × 5.1 hours)).

Thus, the total annual burden for all covered entities is approximately 3,069,314 hours (2,898,897.6 hours for retailers + 170,416.7 hours for manufacturers).

Total annual labor cost: $70,594,222.

The work required to comply with the Pre-sale Availability Rule entails a mix of clerical work and work performed by sales associates. Staff estimates that half of the total burden hours would likely be performed by sales associates. At the manufacturing level, this work would entail ensuring that the written warranty is available for every warranted consumer product. At the retail level, this work would entail ensuring that the written warranty is made available to the consumer prior to sale. The remaining half of the work required to comply with the Pre-sale Availability Rule is clerical in nature, *e.g.,* shipping or otherwise providing copies of manufacturer warranties to retailers, along with retailer maintenance of the warranties. Applying a sales associate wage rate of $24/hour to half of the burden hours and a clerical wage rate of $22/hour to half of the burden hours, the total annual labor cost burden is approximately $70,594,222 (1,534,657 hours × $24 per hour) + (1,534,657 hours × $22 per hour).[7]

Total annual capital or other non labor costs: De minimis.

The vast majority of retailers and warrantors already have developed systems to provide the information the Rule requires. Compliance by retailers typically entails keeping warranties on file electronically, in binders or otherwise, and posting an inexpensive sign indicating warranty availability. Warrantor compliance under the 2016 amendments entails providing retailers, together with the warranted good, a copy of the warranty or the address of the warrantor's internet website where the consumer can review and obtain the warranty terms, along with the contact information where the consumer may use a non-internet based method to obtain a free copy of the warranty terms. Commission staff believes that, in light of the amendments, annual capital or other non-labor costs will remain de minimis.

Request for Comments

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments 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. All comments must be received on or before March 2, 2020.

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before March 2, 2020. Write ''Pre-sale Availability Rule; PRA Comment: FTC File No. P072108'' on your comment. Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online, or to send them to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it through the *https://www.regulations.gov* website by following the instructions on the web-based form. Your comment—including your name and your state—will be

[3] 81 FR 63664–70 (Sept. 15, 2016).

[4] The 2014 estimate was 1,028 large manufacturers and 30,299 small manufacturers subject to the Rule.

[5] The 2014 estimate was 7,745 large retailers and 508,575 small retailers subject to the Rule.

[6] See footnote 3.

[7] The wage rates are derived from occupational data found in the Bureau of Labor Statistics, Occupational Employment and Wages (May 2018).

placed on the public record of this proceeding, including the *https://www.regulations.gov* website. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on *www.regulations.gov.*

If you file your comment on paper, write ''Pre-sale Availability Rule; PRA Comment: FTC File No. P072108'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible FTC website at *www.regulations.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record.[8] Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at *www.regulations.gov,* we cannot redact or remove your comment unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before March 2, 2020. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *https://www.ftc.gov/site-information/privacy-policy.*

Heather Hippsley,

Deputy General Counsel.

[FR Doc. 2019–28194 Filed 12–30–19; 8:45 am]

BILLING CODE 6750–01–P

[8] *See* FTC Rule 4.9(c).

GENERAL SERVICES ADMINISTRATION

[Notice–MR–2019–01; Docket No. 2019–0002; Sequence No. 35]

Modernizing Services for Regulation Management

AGENCY: Office Regulation Management, Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Notice of public meetings and request for comment.

SUMMARY: GSA is seeking public comment on any matters related to the modernization of Electronic Rulemaking Management. Background information on specific topics will be provided in electronic format through the *regulations.gov* docketing system to help inform the public on known issues around which to focus their input. Comments will also be accepted electronically.

To further inform the public on issues affecting the future of Electronic Rulemaking Management, GSA is hosting two town-hall style public meetings. In addition to inviting members of the public to attend these meetings, GSA is seeking subject matter experts who would be interested in participating in one or more panels at these meetings. Further Information regarding the public meetings, the process for requesting to present, and the comment process may be found under the heading **SUPPLEMENTARY INFORMATION.**

DATES: The public meetings will be conducted on January 30 and March 25, 2020. Both meetings will be held from 2:00 p.m., to 4:00 p.m., Eastern Time (ET).

Subject matter experts interested in serving on a panel at one or more public meetings must submit their proposed topics and qualifications/experience, in the form of a resume, for the relevant subject area no later than the following dates:

For the meeting on January 30, 2020, proposals are due midnight January 10, 2020.

For the meeting on March 25, 2020, proposals are due midnight March 2, 2020.

Comments related to any aspect of modernization of Electronic Rulemaking Management must be submitted no later than April 30, 2020.

ADDRESSES: All public meetings will take place at GSA's Central Office at 1800 F Street NW, Washington, DC 20006.

Submit proposals to present by emailing *eRulemaking@gsa.gov.*

Pre-register to attend the January 30, 2020, public meeting at *https://regulationsmanagement.eventbrite.com.*

Pre-register to attend the March 25, 2020, public meeting at *https://regulationsmanagement2.eventbrite.com.*

Submit comments in response to Notice–MR–2019–01 using Docket No. 2019–0002; Sequence No. 35, on *regulations.gov* (*http://www.regulations.gov*).

FOR FURTHER INFORMATION CONTACT: For further information, please contact *eRulemaking@gsa.gov.*

SUPPLEMENTARY INFORMATION:

Background on Electronic Rulemaking Management

GSA's Office of Regulation Management, within OGP, is interested in conducting a dialogue with the public, including industry, special interest groups, academia, researchers, and individuals about challenges and opportunities related to the modernization of the Electronic Rulemaking Management process. The dialogue begins with this public notice and request for comment.

The Office of Regulation Management manages two programs that deliver shared regulatory IT services. The eRulemaking Program manages *Regulations.gov* and the Federal Docket

Management System (FDMS). The Regulatory Information Service Center (RISC) manages *RegInfo.gov* and the RISC/OIRA Consolidated Information System (ROCIS).

GSA's strategy for Rulemaking Modernization is three-fold:

1. Better integrate data and information technology among Federal regulatory information systems to support data analytics, both for rule makers and members of the public.

2. Apply innovative approaches to promote public access, accountability, and transparency.

3. Reduce duplication and increase efficiency across the Federal rulemaking landscape through improved processes and technologies.

Docket No. 2019–0002; Sequence No. 35 at *Regulations.gov* will contain background documents on various topics on the regulatory process within a docket.

You can discover more about the Office of Regulation Management and its regulatory work at: *https://www.gsa.gov/policy-regulations/regulations/how-you-can-improve-regulations.*

You can discover more about e-Rulemaking, including FDMS and *regulations.gov* at: *https://www.fdms.gov/fdms/public/aboutus* and *https://www.regulations.gov/aboutProgram.*

You can discover more about the Regulatory Information Service Center at: *https://www.gsa.gov/about-us/organization/office-of-governmentwide-policy/office-of-acquisition-policy/governmentwide-acq-policy/regulatory-information-service-center* and *https://www.reginfo.gov/public/.*

Written Comments

To assist GSA and OMB in planning for the modernization of the Electronic Rulemaking Management process, GSA and OMB are inviting interested parties to submit written comments.

Instructions: The referenced electronic docket in *www.regulations.gov* is a collection of documents related to this request for comment. Interested members of the public may comment on any individual document, whether or not addressed in one of the public meetings. The public may also comment on any matter relating to modernization of Electronic Rulemaking Management by commenting on the primary document for this notice, referenced in the docket as Notice–MR–2019–01.

From the home page of *regulations.gov,* search for ''Docket No. 2019–0002; Sequence No. 35.'' Identify the specific document within the docket that you would like to comment on, select the link ''Comment Now,'' and follow the instructions provided at the screen. For example, interested parties may wish to comment on the general information in the notice. Others may wish to comment on other more specific background documents that describe the Federal regulatory process and actions under consideration to improve and modernize the process.

For formal consideration, all comments must be submitted to *regulations.gov* at the referenced docket. Comments may be submitted up to April 30, 2020, on any topic related to Electronic Rulemaking Modernization.

GSA may publicly post all presentations submitted to the public meetings, all transcripts associated with the public meetings, and any comments received to the docket on *regulations.gov* without change. Read the *regulations.gov* notifications below regarding sharing of personally identifiable and/or business confidential information.

Individual documents posted on the docket will provide any details on the nature of input sought from the public on specific topics.

In general, GSA is seeking input on the business/mission needs of you or your organization as a participant or interested stakeholder in the rulemaking process. Specifics on proposed services or service improvements, including benefits and costs, would be helpful. Specific suggestions on service management, including performance measures and approaches for ongoing customer engagement would also be helpful.

Comments are also welcome on related technology services, including any specific recommendations for how technology can be applied to achieve specific business needs for regulatory management.

GSA also welcomes any references to existing research, processes, services, or technologies directly related to regulation management or related to functions that can be applied to regulation management.

Please note that comments on individual proposed rulemakings or other agency actions should be addressed to the specific agency and any dockets that they have created for that action.

The role of GSA is that of a shared service provider for supporting public participation and government efficiencies in the regulatory process.

Public Meetings

GSA will be conducting the following public meetings on the topics as indicated below. Attendance at these meetings is not required to provide comments. The public meetings are intended to supplement the background materials in the docket and provide additional insight into specific topics related to Electronic Regulation Management. Transcripts and any presentations from the meetings will be publicly posted to the docket within a reasonable period of time for others to view and provide comments.

Those in attendance at each meeting will have an opportunity to ask questions or make comments through the Town Hall forum, as time permits. However, the meeting forum is not a formal comment process.

The meetings and topics are as follows:

January 30, 2020, from 2:00 p.m. to 4:00 p.m., (ET). GSA is seeking presenters on topics that relate to:

- General challenges and opportunities for improving transparency and public participation in the development and review of regulations.
- The challenges relating to agency management of large volumes comments on proposed regulations.
- Public concern, risks, and solutions addressing instances where the identity of the entity submitting a comment has been falsified, known as the ''fake commenter issue.''
- What technologies or policies could assist with the management of mass comments or fake commenters?
- Perspectives of the commenting community on the value of mass comments from single entities or interest groups.
- Perspectives of the commenting community on how to minimize the levels of organizations submitting comments on behalf of ''fake commenters.''
- The value of mass comments relative to smaller numbers of potentially more substantive comments.

On March 25, 2020, from 2:00 p.m. to 4:00 p.m. (ET), GSA is seeking presenters on topics that relate to:

- General challenges and opportunities for analysis across multiple regulations. For example, a single regulated entity may be subject to multiple overlapping or inconsistent regulations.
- How desirable is it for the public to be able to have a line of sight across the entire life cycle of a rulemaking, from law, to regulation, to U.S. Code? What are the benefits?
- What other types of data analysis tools or reports would be useful for the public?

• What types of regulatory trends or information should be analyzed to benefit the regulatory process?

• What technologies or policies could assist with sharing of data or interoperability of regulatory management systems across the Federal government?

• What are the challenges and opportunities for third party service providers to use regulatory information alone or in combination with other data to deliver commercial services or analysis?

• What technologies or policies could assist with increasing public access to data for or through commercial applications?

In-Person Attendance

Interested parties are invited to attend the public meetings to be held at GSA Headquarters, located at 1800 F St. NW, Washington, DC 20006. While walk-ins will be allowed if there is seating capacity, the public is encouraged to pre-register prior to the scheduled date due to seating limitations. Pre-register for the January 30, 2020, meeting at *https://regulationsmanagement.eventbrite.com. Pre-register for the March 25, 2020, meeting at https://regulationsmanagement2.eventbrite.com.* Check for additional information regarding meeting logistics on *regulations.gov,* Docket No. 2019–0002; Sequence No. 35 as dates approach. Questions may be directed to *eRulemaking@gsa.gov.*

Registration check-in will begin at 1:00 p.m. (ET), and each meeting will start promptly at 2:00 p.m. (ET). Depending on levels of attendance for registered attendees, walk-in registration may or may not be available. Updates on whether registration has reached capacity will be posted on *regulations.gov,* Docket No. 2019–0002; Sequence No. 35. Walk-ins may be admitted if registered attendees do not show. Attendees must present government-issued photo identification.

Virtual Attendance

Interested parties may also attend virtually through GSA's virtual meeting platform, hosted by Adobe Connect. Further details on the virtual meeting will be made available via GSA Interact at *https://interact.gsa.gov/group/commercial-platform-initiative.*

Meeting Accommodations

The public meeting is physically accessible to people with disabilities. Sign language interpretation and auxiliary aids will be available at the meetings and online. Any specific requests for accommodations and auxiliary aids must be directed to *eRulemaking@gsa.gov* no later than 10 working days prior to the scheduled meetings.

Panel Presentations

GSA intends to conduct two town-hall/panel style discussions, with each event focused on the respective topics outlined above. Each meeting is expected to consist of two panels with three to five participants per panel. Each panel is expected to run 50 minutes, with 45 minutes of panel discussion and 10 minutes of audience questions.

Subject matter experts interested in serving on a panel at one or both public meetings must submit their proposals, to include a resume, an indication of the selected meeting or meetings, and a synopsis of their proposed topics and key points of no more than 250 words, no later than the following dates:

For the January 30, 2020, meeting, proposals are due midnight January 10, 2020.

For the March 25, 2020, meeting, proposals are due midnight March 2, 2020.

Submissions are to be emailed to *eRulemaking@gsa.gov.* GSA will select the panelists and will formally notify and coordinate with them in advance of the respective meeting. In selecting panelists, GSA will seek an array of perspectives, backgrounds, and experiences.

Dated: December 24, 2019.

Tobias Q. Schroeder,

Director, eRulemaking Program Management Office, Office of Regulation Management, Office of Government-wide Policy, General Services Administration.

[FR Doc. 2019–28242 Filed 12–30–19; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–P–3877]

Determination That GLUCOPHAGE (Metformin Hydrochloride) Oral Tablets, 500 Milligrams, 850 Milligrams, and 1 Gram, and GLUCOPHAGE XR (Metformin Hydrochloride) Oral Extended-Release Tablets, 500 Milligrams and 750 Milligrams, Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) has determined that, GLUCOPHAGE (metformin hydrochloride) oral tablets, 500 milligrams (mg), 850 mg, and 1 gram (g), and GLUCOPHAGE XR (metformin hydrochloride) oral extended-release tablets, 500 mg and 750 mg, were not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to these drug products, and it will allow FDA to continue to approve ANDAs that refer to these products as long as they meet relevant legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT: Carlarease Hunter, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6213, Silver Spring, MD 20993–0002, 301–796–3702, *Carlarease.Hunter@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn

from sale but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

GLUCOPHAGE (metformin hydrochloride) oral tablets, 500 mg, 850 mg, and 1 g, are the subject of NDA 020357, held by EMD Serono Inc. and initially approved on March 3, 1995. GLUCOPHAGE is indicated as an adjunct to diet and exercise to improve glycemic control in adults and pediatric patients 10 years of age and older with type 2 diabetes mellitus. GLUCOPHAGE (metformin hydrochloride) oral tablets, 500 mg, 850 mg, and 1 g, are currently listed in the ''Discontinued Drug Product List'' section of the Orange Book.

GLUCOPHAGE XR (metformin hydrochloride) oral extended-release tablets, 500 mg and 750 mg, are the subject of NDA 021202, held by EMD Serono Inc. and initially approved on October 13, 2000. GLUCOPHAGE XR is indicated as an adjunct to diet and exercise to improve glycemic control in adults with type 2 diabetes mellitus. GLUCOPHAGE XR (metformin hydrochloride) oral extended-release tablets, 500 mg and 750 mg, are currently listed in the ''Discontinued Drug Product List'' section of the Orange Book.

Harman Finochem Ltd. submitted a citizen petition dated August 17, 2019 (Docket No. FDA–2019–P–3877), under 21 CFR 10.30, requesting that FDA confirm that GLUCOPHAGE (metformin hydrochloride) oral tablets were not withdrawn from sale for reasons of safety or effectiveness. Although the citizen petition did not address the GLUCOPHAGE XR (metformin hydrochloride) oral extended-release tablets, 500 mg and 750 mg, those products have also been discontinued. On our own initiative, we have also determined whether those products were withdrawn for safety or effectiveness reasons.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that GLUCOPHAGE (metformin hydrochloride) oral tablets, 500 mg, 850 mg, and 1 g, and GLUCOPHAGE XR (metformin hydrochloride) oral extended-release tablets, 500 mg and 750 mg, were not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that GLUCOPHAGE (metformin hydrochloride) oral tablets were withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of GLUCOPHAGE (metformin hydrochloride) oral tablets, 500 mg, 850 mg, and 1 g, and GLUCOPHAGE XR (metformin hydrochloride) oral extended-release tablets, 500 mg and 750 mg, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have reviewed the available evidence and determined that these drug products were not withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list GLUCOPHAGE (metformin hydrochloride) oral tablets, 500 mg, 850 mg, and 1 g, and GLUCOPHAGE XR (metformin hydrochloride) oral extended-release tablets, 500 mg and 750 mg, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. FDA will not begin procedures to withdraw approval of approved ANDAs that refer to these drug products. Additional ANDAs for these drug products may also be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for these drug products should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: December 26, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–28270 Filed 12–30–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2013–N–0134; FDA–2011–N–0902; FDA–2013–N–0662; FDA–2013–N–0242; FDA–2019–N–1517; FDA–2019–N–0549; FDA–2019–N–0305; FDA–2012–N–0477; FDA–2016–D–2565, and FDA–2018–N–4839]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approvals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of information collections that have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The following is a list of FDA information collections recently approved by OMB under section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The OMB control number and expiration date of OMB approval for each information collection are shown in table 1. Copies of the supporting statements for the information collections are available on the internet at *http://www.reginfo.gov/public/do/PRAMain.* 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.

TABLE 1—LIST OF INFORMATION COLLECTIONS APPROVED BY OMB

Title of collection	OMB control No.	Date approval expires
Mammography Quality Standards Act Requirements	0910–0309	10/31/2022
Prescription Drug Product Labeling; Medication Guide Requirements	0910–0393	10/31/2022
Applications for FDA Approval to Market a New Drug: Patent Submission and Listing Requirements and Application of 30-month Stays on Approval of Abbreviated New Drug Applications Certifying That a Patent Claiming a Drug Is Invalid or Will Not Be Infringed	0910–0513	10/31/2022
Current Good Manufacturing Practice for Positron Emission	0910–0667	10/31/2022

TABLE 1—LIST OF INFORMATION COLLECTIONS APPROVED BY OMB—Continued

Title of collection	OMB control No.	Date approval expires
Abbreviated New Animal Drug Applications	0910–0669	10/31/2022
Medical Devices: Use of Certain Symbols in Labeling—Glossary to Support the Use of Symbols in Labeling	0910–0740	10/31/2022
Deeming Tobacco Products to be Subject to the Federal Food, Drug, and Cosmetic Act	0910–0768	10/31/2022
Investigational Device Exemptions Reports and Records	0910–0078	11/30/2022
510(k) Third-Party Review Program	0910–0375	11/30/2022
Guidance for Industry With the Center for Veterinary Medicine's Electronic Submission System	0910–0454	11/30/2022

Dated: December 16, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–28249 Filed 12–30–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–4319]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Unique Device Identification System

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by January 30, 2020.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0720. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Unique Device Identification System—21 CFR Parts 16, 801, 803, 806, 810, 814, 820, 821, 822, and 830

OMB Control Number 0910–0720—Extension

In accordance with the Unique Device Identification (UDI) system (see 21 CFR part 801, subpart B), medical device labelers, unless excepted, are required to design and use medical device labels and device packages that bear a UDI, present dates on labels in a particular format, and submit data concerning each version or model of a device to the Global Unique Device Identification Database (GUDID) no later than the date the label of the device must bear a UDI. Once a device becomes subject to UDI requirements, respondents will be required to update the information reported whenever the information changes.

The recordkeeping, reporting, and third-party disclosure requirements referenced in this document are imposed on any person who causes a label to be applied to a device, or who causes the label to be modified, with the intent that the device will be commercially distributed without any subsequent replacement or modification of the label. In most instances, the labeler would be the device manufacturer, but other types of labelers include a specification developer, a single-use device reprocessor, a convenience kit assembler, a private label distributor, a repackager, or a relabeler. Respondents may also include any private organization that applies for accreditation by FDA as an issuing agency.

FDA has identified the following requirements as having burdens that must be accounted for under the PRA; the burdens associated with these requirements are summarized in the table that follows:

Section 801.18 requires that whenever a labeler of a medical device includes an expiration date, a date of manufacture, or any other date intended to be brought to the attention of the user of the device, the labeler must present the date on the label in a format that meets the requirements of this section.

Section 801.20 requires every medical device label and package to bear a UDI.

Under § 801.35, any labeler of a device that is not required to bear a UDI on its label may include a UDI on the label of that device and utilize the GUDID.

Under § 801.45, any device that has to be labeled with a UDI also has to bear a permanent marking providing the UDI on the device itself if the device is intended for more than one use and intended to be reprocessed before each use.

Section 801.50 requires stand-alone software to comply with specific labeling requirements that identify the software.

Section 801.55 authorizes additional, case-by-case, labeling exceptions and alternatives to standard UDI labeling requirements.

If a labeler relabels or modifies a label of a device that is required to bear a UDI, under § 830.60 it has to keep a record showing the relationship of the original device identifier to the new device identifier.

Section 830.110 requires an applicant seeking initial FDA accreditation as a UDI-issuing to furnish FDA an application containing certain information, materials, and supporting documentation.

Under § 830.120, an FDA-accredited issuing is required to disclose information concerning its system for the assignment of UDIs; maintain a list of labelers that use its system for the assignment of UDIs and provide FDA a copy of such list; and upon request, provide FDA with information concerning a labeler that is employing the issuing agency's system for assignment of UDIs.

Sections 830.310 and 830.320 require the labeler to provide certain information to the GUDID concerning the labeler and each version or model of a device required to be labeled with a UDI, unless the labeler obtains a waiver.

Section 830.360 requires each labeler to retain records showing all UDIs used to identify devices that must be labeled with a UDI and the particular version or model associated with each device identifier, until 3 years after it ceases to market a version or model of a device.

Respondents who are required to submit data to the Agency under certain other approved information collections (listed below) are required to include UDI data elements for the device that is the subject of such information collection. Addition of the UDI data elements is included in this burden estimate for the conforming amendments in the following 21 CFR parts:

Part 803—Medical Device Reporting (OMB control number 0910–0437),

Part 806—Medical Devices; Reports of Corrections and Removals (OMB control number 0910–0359),

Part 814—Premarket Approval of Medical Devices (OMB control number 0910–0231),

Part 820—Quality System Regulation (OMB control number 0910–0073),

Part 821—Medical Device Tracking Requirements (OMB control number 0910–0442), and

Part 822—Postmarket Surveillance (OMB control number 0910–0449).

In the **Federal Register** of July 31, 2019 (84 FR 37315), FDA published a 60-day notice requesting public comment on the proposed collection of information. Although one comment was received, it was not responsive to the four collection of information topics.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL BURDEN

	Number of respondents [1]	Number of responses per respondent [2]	Total annual responses [3]	Average burden per response [4]	Total hours [5]	Total capital costs and operating and maintenance costs
Reporting	6,199	51	316,149	0.023 (1 minute)	7,289	$425,000
Recordkeeping	5,987	51	305,337	0.989 (59 minutes)	302,121	14,733,333
Third-Party Disclosure	5,987	51	305,337	0.885 (53 minutes)	270,143	13,033,333

[1] Maximum number of respondents for any regulatory requirement within each category. Individual regulatory requirements within the category may involve fewer respondents.
[2] Maximum number of responses for any regulatory requirement within each category. Individual regulatory requirements within the category may involve fewer responses.
[3] Maximum total annual responses for any regulatory requirement within each category. Individual regulatory requirements within the category may involve fewer total annual responses.
[4] Rounded to three decimals. Total hours reflects a more precise, non-rounded average burden per response. An approximate (non-rounded) conversion to minutes is shown in parentheses.
[5] Total hours is based on a more precise burden per response than the rounded value show in this table.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

Dated: December 13, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–28246 Filed 12–30–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–3586]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Focus Groups About Drug Products as Used by the Food and Drug Administration

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (PRA).

DATES: Fax written comments on the collection of information by January 30, 2020.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0677. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Focus Groups About Drug Products as Used by the Food and Drug Administration

OMB Control Number 0910–0677—Extension

Focus groups provide an important role in gathering information because they allow for a more indepth understanding of individuals' attitudes, beliefs, motivations, and feelings than do quantitative studies. Focus groups serve the narrowly defined need for direct and informal opinion on a specific topic and, as a qualitative research tool, have three major purposes:

- To obtain information that is useful for developing variables and measures for quantitative studies;
- to better understand people's attitudes and emotions in response to topics and concepts; and
- to further explore findings obtained from quantitative studies.

We use information gathered from focus group findings to test and refine ideas and to help develop messages and other communications, but will generally conduct further research before making important decisions such as adopting new policies and allocating or redirecting significant resources to support these policies.

Our Center for Drug Evaluation and Research, as well as other Agency components, engage focus groups about

regulated drug products on a variety of topics related to consumer, patient, or healthcare professional perceptions and use of drug products and related materials. These materials may include, but are not limited to direct-to-consumer prescription drug promotion, physician labeling of prescription drugs, medication guides, over-the-counter drug labeling, emerging risk communications, patient labeling, online sales of medical products, and consumer and professional education.

In the **Federal Register** of July 17, 2019 (84 FR 34186), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

Annually, we project that 20 studies will be initiated using 160 focus groups with an average of 9 persons per group. We assume each focus group will last an average of 1.75 hours.

We estimate the burden for the information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Focus Group Study	1,440	1	1,440	1.75	2,520

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

Dated: December 18, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–28247 Filed 12–30–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–5955]

International Drug Scheduling; Convention on Psychotropic Substances; Single Convention on Narcotic Drugs; World Health Organization; Scheduling Recommendations; AB-FUBINACA; 5F-AMB-PINACA; 5F-MDMB-PICA; 4-F-MDMB-BINACA; 4-CMC; N-ethylhexedrone; alpha-PHP; DOC; Crotonyl Fentanyl; Valeryl Fentanyl; Flualprazolam and Etizolam; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing interested persons with the opportunity to submit written comments concerning recommendations by the World Health Organization (WHO) to impose international manufacturing and distributing restrictions, under international treaties, on certain drug substances. The comments received in response to this notice will be considered in preparing the United States' position on these proposals for a meeting of the United Nations Commission on Narcotic Drugs (CND) in Vienna, Austria, in March 2020. This notice is issued under the Controlled Substances Act (CSA).

DATES: Submit either electronic or written comments by January 30, 2020. The short time period for the submission of comments is needed to ensure that Health and Human Services (HHS) may, in a timely fashion, carry out the required action and be responsive to the United Nations.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before January 30, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of January 30, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA-2019-N-5955 for ''International Drug Scheduling; Convention on Psychotropic Substances; Single Convention on Narcotic Drugs; World Health Organization; Scheduling Recommendations; AB-FUBINACA; 5F-AMB-PINACA; 5F-MDMB-PICA; 4-F-MDMB-BINACA; 4-CMC; N-ethylhexedrone; alpha-PHP; DOC; Crotonyl Fentanyl; Valeryl Fentanyl; Flualprazolam and Etizolam; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential

information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:

James R. Hunter, Center for Drug Evaluation and Research, Controlled Substance Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 5150, Silver Spring, MD 20993–0002, 301–796–3156, *james.hunter@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The United States is a party to the 1971 Convention on Psychotropic Substances (1971 Convention). Section 201(d)(2)(B) of the CSA (21 U.S.C. 811(d)(2)(B)) provides that when the United States is notified under Article 2 of the 1971 Convention that the CND proposes to decide whether to add a drug or other substance to one of the schedules of the 1971 Convention, transfer a drug or substance from one schedule to another, or delete it from the schedules, the Secretary of State must transmit notice of such information to the Secretary of Health and Human Services (Secretary of HHS). The Secretary of HHS must then publish a summary of such information in the **Federal Register** and provide opportunity for interested persons to submit comments. The Secretary of HHS must then evaluate the proposal and furnish a recommendation to the Secretary of State that shall be binding on the representative of the United States in discussions and negotiations relating to the proposal.

As detailed in the following paragraphs, the Secretary of State has received notification from the Secretary-General of the United Nations (the Secretary-General) regarding ten substances to be considered for control under the 1971 Convention. This notification reflects the recommendation from the 42nd WHO Expert Committee for Drug Dependence (ECDD), which met in October 2019. In the **Federal Register** of September 10, 2019 (84 FR 47521), FDA announced the WHO ECDD review and invited interested persons to submit information for WHO's consideration.

The full text of the notification from the Secretary-General is provided in section II. Section 201(d)(2)(B) of the CSA requires the Secretary of HHS, after receiving a notification proposing scheduling, to publish a notice in the **Federal Register** to provide the opportunity for interested persons to submit information and comments on the proposed scheduling action.

The United States is also a party to the 1961 Single Convention on Narcotic Drugs (1961 Convention). The Secretary of State has received a notification from the Secretary-General regarding two substances to be considered for control under this convention. The CSA does not require HHS to publish a summary of such information in the **Federal Register**. Nevertheless, to provide interested and affected persons an opportunity to submit comments regarding the WHO recommendations for drugs under the 1961 Convention, the notification regarding these substances is also included in this **Federal Register** notice. The comments will be shared with other relevant Agencies to assist the Secretary of State in formulating the position of the United States on the control of these substances. The HHS recommendations are not binding on the representative of the United States in discussions and negotiations relating to the proposal regarding control of substances under the 1961 Convention.

II. United Nations Notification

The formal notification from the United Nations that identifies the drug substances and explains the basis for the scheduling recommendations is reproduced as follows (non-relevant text removed):

Reference: NAR/CL.10/2019 WHO/ECDD42; 1961C-Art.3, 1971C-Art.2 CU 2019/462/DTA/SGB (A)

The Secretary-General of the United Nations presents his compliments to the Secretary of State of the United States of America and has the honour to inform the Government that in a letter dated 15 November 2019 the Director-General of the World Health Organization (WHO), pursuant to article 3, paragraphs 1 and 3 of the Single Convention on Narcotic Drugs of 1961 as amended by the 1972 Protocol (1961 Convention), and article 2, paragraphs 1 and 4 of the Convention on Psychotropic Substances of 1971 (1971 Convention), notified the Secretary-General of the following recommendations:

Substances recommended to be added to Schedule I of the 1961 Convention:

Crotonyl fentanyl
chemical name: (2E)-N-phenyl-N-[1-(2-phenylethyl)piperidin-4-yl]but-2-enamide

Valeryl fentanyl
chemical name: N-phenyl-N-[1-(2-phenylethyl)piperidin-4-yl]pentanamide

Substance recommended to be added to Schedule I of the 1971 Convention:

DOC
chemical name: 1-(4-chloro-2,5-dimethoxyphenyl)propan-2-amine

Substances recommended to be added to Schedule II of the 1971 Convention:

AB-FUBINACA
chemical name: N-[1-amino-3-methyl-1-oxobutan-2-yl]-1-[(4-fluorophenyl)methyl]-1H-indazole-3-carboxamide

5F-AMB-PINACA (5F-AMB, 5F-MMB-PINACA)
chemical name: methyl 2-{[1-(5-fluoropentyl)-1H-indazole-3-carbonyl]amino}-3-methylbutanoate

5F-MDMB-PICA (5F-MDMB-2201)
chemical name: methyl 2-{[1-(5-fluoropentyl)-1H-indole-3-carbonyl]amino}-3,3-dimethylbutanoate

4F-MDMB-BINACA
chemical name: methyl 2-{[1-(4-fluorobutyl)-1H-indazole-3-carbonyl]amino}-3,3-dimethylbutanoate

4-CMC (4-chloromethcathinone; clephedrone)
chemical name: 1-(4-chlorophenyl)-2-(methylamino)propan-1-one

N-Ethylhexedrone
chemical name: 2-(ethylamino)-1-phenylhexan-1-one
Alpha-PHP
chemical name: 1-phenyl-2-(pyrrolidine-1-yl)hexan-1-one

Substances recommended to be added to Schedule IV of the 1971 Convention:

Flualprazolam
chemical name: 8-chloro-6-(2-fluorophenyl)-1-methyl-4*H*-benzo[*f*][1,2,4]triazolo[4,3-*a*][1,4]diazepine
Etizolam
chemical name: 4-(2-chlorophenyl)-2-ethyl-9-methyl-6H-thieno[3,2f][1,2,4]triazolo[4,3 a][1,4]diazepine

In accordance with the provisions of article 3, paragraph 2 of the 1961 Convention and article 2, paragraph 2 of the 1971 Convention, the Secretary-General hereby transmits the notification as annex I to the present note. In connection with the notification, WHO also submitted a summary of the rationale of the recommendations which is hereby transmitted as annex II. For time reasons, this notification and its annexes I and II are transmitted in English only. The notification and its annexes will be transmitted in French and Spanish as soon as available.

Also in accordance with the same provisions, the notification from WHO will be brought to the attention of the 63rd session of the Commission on Narcotic Drugs (2–6 March 2020) in a pre-session document that will be made available in the six official languages of the United Nations on the website of the 63rd session of the CND: *https://www.unodc.org/unodc/en/commissions/CND/session/63_Session_2020/session-63-of-the-commission-on-narcotic-drugs.html.*

In order to assist the Commission in reaching a decision, it would be appreciated if the Government could communicate any comments it considers relevant to the possible scheduling of substances recommended by WHO to be placed under international control under the 1961 Convention, namely: Crotonyl fentanyl, Valeryl fentanyl, as well as any economic, social, legal, administrative or other factors that it considers relevant to the possible scheduling of substances recommended by WHO to be placed under international control under the 1971 Convention, namely: DOC, AB-FUBINACA, 5F-AMB-PINACA (5F-AMB, 5F-MMB-PINACA), 5F-MDMB-PICA (5F-MDMB-2201), 4F-MDMB-BINACA, 4-CMC (4-chloromethcathinone; clephedrone), N-Ethylhexedrone, Alpha-PHP, Flualprazolam, Etizolam.

Communications should be sent to the Executive Director of the United Nations Office on Drugs and Crime, c/o Secretary, Commission on Narcotic Drugs, P.O. Box 500, 1400 Vienna, Austria, email: *unodc-sgb@un.org* (fax: +43–1–26060–5885), no later than by 31 January 2020.

2 December 2019

His Excellency,
Mr. Rex Tillerson,
Secretary of State of the United States of America

Annex I

Letter Addressed to the Secretary-General of the United Nations From the Director-General of the World Health Organization

''The Forty-second meeting of the WHO Expert Committee on Drug Dependence was convened from 21 to 25 October 2019 at WHO headquarters in Geneva. The objective of this meeting was to carry out an in-depth evaluation of psychoactive substances in order to determine whether WHO should recommend these substances to be placed under international control or if their level of control should be changed.

The Forty-second Meeting reviewed thirteen psychoactive substances, five of which are synthetic cannabinoids, four synthetic stimulants, two fentanyl analogues, and two benzodiazepines. In addition, the Meeting carried out a pre-review of preparations of acetyldihydrocodeine, codeine, dihydrocodeine, ethylmorphine, nicocodine, nicodicodine, norcodeine and pholcodine that are listed in Schedule III of the 1961 Convention on Narcotic Drugs.

With reference to Article 3, paragraphs 1 and 3 of the Single Convention on Narcotic Drugs (1961), as amended by the 1972 Protocol, and Article 2, paragraphs 1 and 4 of the Convention on Psychotropic Substances (1971), I am pleased to submit recommendations of the Forty-second Meeting of ECDD as follows:

To be added to Schedule I of the Single Convention on Narcotic Drugs (1961):

Crotonyl fentanyl
chemical name: (2E)-N-phenyl-N-[1-(2-phenylethyl)piperidin-4-yl]but-2-enamide
Valeryl fentanyl
chemical name: N-phenyl-N-[1-(2-phenylethyl)piperidin-4-yl]pentanamide

To be added to Schedule I of the Convention on Psychotropic Substances (1971):

DOC
chemical name: 1-(4-chloro-2,5-dimethoxyphenyl)propan-2-amine

To be added to Schedule II of the Convention on Psychotropic Substances (1971):

AB-FUBINACA
chemical name: N-[1-amino-3-methyl-1-oxobutan-2-yl]-1-[(4-fluorophenyl)methyl]-1H-indazole-3-carboxamide
5F-AMB-PINACA (5F-AMB, 5F-MMB-PINACA)
chemical name: methyl 2-{[1-(5-fluoropentyl)-1H-indazole-3-carbonyl]amino}-3-methylbutanoate
5F-MDMB-PICA (5F-MDMB-2201)
chemical name: methyl 2-{[1-(5-fluoropentyl)-1H-indole-3-carbonyl]amino}-3,3-dimethylbutanoate
4-F-MDMB-BINACA
chemical name: methyl 2-{[1-(4-fluorobutyl)-1H-indazole-3-carbonyl]amino}-3,3-dimethylbutanoate
4-CMC (4-chloromethcathinone; clephedrone)
chemical name: 1-(4-chlorophenyl)-2-(methylamino)propan-1-one
N-ethylhexedrone
chemical name: 2-(ethylamino)-1-phenylhexan-1-one
Alpha-PHP
chemical name: 1-phenyl-2-(pyrrolidine-1-yl)hexan-1-one

To be added to Schedule IV of the Convention on Psychotropic Substances (1971):

Flualprazolam
chemical name: 8-chloro-6-(2-fluorophenyl)-1-methyl-4*H*-benzo[*f*][1,2,4]triazolo[4,3-*a*][1,4]diazepine
Etizolam
chemical name: 4-(2-chlorophenyl)-2-ethyl-9-methyl-6H-thieno[3,2f][1,2,4]triazolo [4,3-a][1,4]diazepine

To be kept under surveillance:

APINACA (AKB-48)
chemical name: N-(adamantan-1-yl)-1-pentyl-1H-indazole-3-carboxamide

To proceed to critical review:

—Preparations of acetyldihydrocodeine, codeine, dihydrocodeine, ethylmorphine, nicocodine, nicodicodine, norcodeine and pholcodine listed in Schedule III of the 1961 Single Convention on Narcotic Drugs

The assessments and findings on which these recommendations are based are set out in detail in the report of the Forty-second Meeting of the WHO Expert Committee on Drug Dependence.

A summary of the rationale of these recommendations is attached in Annex 1 of this letter.

I am very pleased with the ongoing collaboration between WHO, the United Nations Office on Drugs and Crime (UNODC) and the International Narcotics Control Board (INCB) and in particular, how this collaboration has benefited the work of the WHO Expert Committee on Drug Dependence and more generally, the implementation of the operational recommendations of the United Nations General Assembly Special Session (UNGASS) 2016.''

Annex II

Summary of the Rationale for the Recommendations of the 42nd Expert Committee on Drug Dependence

Substances recommended to be added to Schedule I of the Single Convention on Narcotic Drugs (1961), as amended by the 1972 Protocol:

Crotonyl fentanyl

The chemical name for crotonyl fentanyl is (2E)-N-phenyl-N-[1-(2-phenylethyl)piperidin-4-yl]but-2-enamide.

Crotonyl fentanyl binds to mu opioid receptors and acts as an opioid agonist. In animal models, crotonyl fentanyl produces antinociception, actions predictive of oxycodone-like subjective effects and both central nervous system stimulation and depression. The opioid antagonist naltrexone blocks the effects of crotonyl fentanyl. This pharmacological profile indicates that crotonyl fentanyl is an opioid and comparative studies suggest that it has a potency intermediate between oxycodone and fentanyl.

Consistent with the results from animal studies, the effects of crotonyl fentanyl were reversed by an opioid antagonist in a clinical admission due to overdose. Due to its opioid mechanism of action, crotonyl fentanyl has the potential to be associated with substantial harm.

Crotonyl fentanyl has been found in seized material from countries across several regions. It has no veterinary or medical use.

Based on its opioid mechanism of action and similarity to drugs such as oxycodone and fentanyl that are controlled under Schedule I of the Single Convention on Narcotic Drugs, it is recommended that crotonyl fentanyl also be controlled under Schedule I of the Single Convention on Narcotic Drugs (1961).

Valeryl fentanyl

The chemical name for valeryl fentanyl is N-phenyl-N-[1-(2-phenylethyl)piperidin-4-yl]pentanamide.

Valeryl fentanyl binds to mu opioid receptors and acts as an opioid agonist. In animal models, valeryl fentanyl suppresses opioid withdrawal symptoms, produces antinociception and has actions predictive of oxycodone-like subjective effects. The opioid antagonist naltrexone blocks the effects of valeryl fentanyl. This pharmacological profile indicates that valeryl fentanyl is an opioid and comparative studies suggest that it has a potency less than that of fentanyl.

Valeryl fentanyl has been detected in biological samples from a small number of deaths and cases of driving under the influence of drugs.

Valeryl fentanyl has been detected in seizures from countries across several regions. It has no veterinary or medical use.

Based on the evidence of its opioid mechanism of action and similarity to drugs such as fentanyl that are controlled under Schedule I of the Single Convention on Narcotic Drugs, it is recommended that valeryl fentanyl also be controlled under Schedule I of the Single Convention on Narcotic Drugs (1961).

Substance recommended to be added to Schedule I of the Convention on Psychotropic Substances (1971):

DOC

DOC is also known as 4-chloro-2,5-DMA or 2,5-dimethoxy-4-chloroamphetamine. Its chemical name is 1-(4-chloro-2,5-dimethoxyphenyl)propan-2-amine.

DOC is an agonist at the serotonergic 5–HT2A receptor, a mechanism it shares with hallucinogens such as LSD.

In animal models, DOC has actions predictive of hallucinogenic subjective effects (similar to LSD and DOM) and shows evidence of rewarding effects. It can produce both central nervous system stimulation and depression.

Based on clinical admissions due to overdose, the adverse effects associated with use of DOC include agitation, aggression, hallucinations, tachycardia, hyperthermia and seizures.

DOC has been detected in 40 countries. It has no veterinary or medical use.

Based on its similarity in mechanism of action and effects to currently scheduled hallucinogens such as LSD and DOM, and the evidence that it is abused so as to constitute a public health and social problem, it is recommended that DOC be controlled under the 1971 Convention on Psychotropic Substances. As it has no medical use and its use constitutes a serious risk to public health, it is recommended that it be controlled under Schedule I of 1971 Convention on Psychotropic Substances.

Substances recommended to be scheduled in Schedule II of the Convention on Psychotropic Substances (1971):

AB-FUBINACA

The chemical name for AB-FUBINACA is N-[1-amino-3-methyl-1-oxobutan-2-yl]-1-[(4-fluorophenyl)methyl]-1H-indazole-3-carboxamide.

In common with other synthetic cannabinoids, AB-FUBINACA is a full agonist at the cannabinoid CB1 receptor that mediates the psychoactive effects of cannabinoids. In animal studies, it produced central nervous system depression and other typical cannabinoid behavioural effects and had actions predictive of cannabinoid subjective effects.

AB-FUBINACA produces neurological signs in animals that are indicative of toxicity, including seizures, hyperreflexia and aggression. Based on its mechanism of action, it would be expected to produce a range of adverse effects in human users that include tachycardia, nausea, vomiting, confusion and hallucinations. There are a large number of cases of intoxication resulting from AB-FUBINACA, often in combination with other drugs, and at least one death has been reported that is attributable to the effects of AB-FUBINACA.

AB-FUBINACA use has been reported in over 30 countries across different regions. It has no veterinary or medical use.

Based on its capacity to produce a state of dependence, its ability to produce central nervous system depression and the evidence that it is abused so as to constitute a public health and social problem, it is recommended that AB-FUBINACA be controlled under the 1971 Convention on Psychotropic Substances. As it has no medical use and its use constitutes a substantial risk to public health, it is recommended that it be controlled under Schedule II of 1971 Convention on Psychotropic Substances.

5F-AMB-PINACA

5F-AMB-PINACA is also known as 5F-AMB and 5F-MMB-PINACA. Its chemical name is methyl 2-{[1-(5-fluoropentyl)-1H-indazole-3-carbonyl]amino}-3-methylbutanoate.

In common with other synthetic cannabinoids, 5F-AMB-PINACA is a full agonist at the cannabinoid CB1 receptor that mediates the psychoactive effects of cannabinoids. In animal studies it

produced central nervous system depression and had actions predictive of cannabinoid-like subjective effects. 5F-AMB-PINACA produces impairment of memory and seizures in animals.

5F-AMB-PINACA use has been associated with a number of cases of fatal and non-fatal intoxication often in combination with other drugs. In a case of non-fatal intoxication due to 5F-AMB-PINACA alone, the effects included cognitive impairment, slowed movement, slurred speech and poor coordination. Based on its mechanism of action, it would also be expected to produce a range of other effects in human users that include tachycardia, nausea, vomiting, confusion and hallucinations. 5F-AMB-PINACA has been identified as a causal factor in motor vehicle accidents, some of which were fatal.

5F-AMB-PINACA use has been reported in over 30 countries across different regions. It has no veterinary or medical use.

Based on its capacity to produce a state of dependence, its ability to produce central nervous system depression and the evidence that it is abused so as to constitute a public health and social problem, it is recommended that 5F-AMB-PINACA be controlled under the 1971 Convention on Psychotropic Substances. As it has no medical use and its use constitutes a substantial risk to public health, it is recommended that it be controlled under Schedule II of the 1971 Convention on Psychotropic Substances.

5F-MDMB-PICA

5F-MDMB-PICA is also known as 5F-MDMB-2201. Its chemical name is methyl 2-{[1-(5-fluoropentyl)-1H-indole-3-carbonyl]amino}-3,3-dimethylbutanoate.

In common with other synthetic cannabinoids, 5F-MDMB-PICA is a full agonist at the cannabinoid CB1 receptor that mediates the psychoactive effects of cannabinoids.

Its use has been associated with a number of fatal and non-fatal intoxications that have been characterised by effects such as decreased mental status, agitated delirium and seizures. While 5F-MDMB-PICA has been present in biological samples mostly in combination with other drugs, in at least some of these cases 5F-MDMB-PICA has been assessed as having a high contribution to the effects produced. It has been used by victims of three apparent mass overdose events, but at least one other synthetic cannabinoid was also detected in biological fluids from the victims.

5F-MDMB-PICA has been detected in 20 countries. It has no veterinary or medical use.

Based on its mechanism of action, 5F-MDMB-PICA has the ability to produce a state of dependence and central nervous system depression. There is evidence that it is abused so as to constitute a public health and social problem. It is therefore recommended that 5F-MDMB-PICA be controlled under the 1971 Convention on Psychotropic Substances. As it has no medical use and its use constitutes a substantial risk to public health, it is recommended that it be controlled under Schedule II of the 1971 Convention on Psychotropic Substances.

4F-MDMB-BINACA

4F-MDMB-BINACA is also known as 4F-MDMB-BUTINACA. Its chemical name is methyl 2-{[1-(4-fluorobutyl)-1H-indazole-3-carbonyl]amino}-3,3-dimethylbutanoate.

In common with other synthetic cannabinoids, 4F-MDMB-BINACA is a full agonist at the CB1 receptor that mediates the psychoactive effects of cannabinoids.

Self-reported effects provided by individuals who had used cannabinoid products that included 4F-MDMB-BINACA as the major constituent, included auditory and visual hallucinations, vomiting, paranoia, euphoria, relaxation, irregular heartbeat, agitation, confusion, insomnia, and chest pain. These effects are consistent with the cannabinoid full agonist mechanism of action of 4F-MDMB-BINACA. Its use has been associated with a number of fatal and non-fatal intoxications and of cases of driving under the influence of drugs. However, other synthetic cannabinoids have been detected in most of these cases.

4F-MDMB-BINACA has been detected in a small number of countries to date, but its use may be increasing. It has no veterinary or medical use.

Based on its mechanism of action, 4F-MDMB-BINACA has the ability to produce a state of dependence and central nervous system depression. There is evidence that it is abused so as to constitute a public health and social problem. It is therefore recommended that 4F-MDMB-BINACA be controlled under the 1971 Convention on Psychotropic Substances. As it has no medical use and its use constitutes a substantial risk to public health, it is recommended that it be controlled under Schedule II of the 1971 Convention on Psychotropic Substances.

4-CMC

4-CMC is also known as 4-chloromethcathinone and clephedrone. Its chemical name is 1-(4-chlorophenyl)-2-(methylamino)propan-1-one.

In common with other stimulants used non-medically, 4-CMC increases neuronal concentrations of the neurotransmitter dopamine. It also has effects on serotonin and, to a lesser extent, noradrenaline.

In animal models, 4-CMC has effects predictive of abuse potential, including actions predictive of MDMA-like subjective effects and stimulation of brain reward centres. It also produces central nervous system stimulation. Users of the drug report effects similar to other stimulants, particularly MDMA-like effects, including increased energy, mood elevation and increased sociability.

4-CMC use has been associated with adverse effects typical of stimulant drugs, including tachycardia, agitation and impaired movement. Based on these effects and its mechanism of action, major risks associated with use of this drug will include cardiac failure and psychosis. In association with other drugs, 4-CMC has been involved in fatalities due to overdose, suicide and traffic accidents. It has been detected in used syringes, indicating the potential for injection related health problems in association with its use.

4-CMC has been detected in many countries across different regions. It has no veterinary or medical use.

Based on its mechanism of action and effects, 4-CMC has the ability to produce a state of dependence and central nervous system stimulation. There is evidence that it is abused so as to constitute a public health and social problem. It is therefore recommended that 4-CMC be controlled under the 1971 Convention on Psychotropic Substances. As it has no medical use and its use constitutes a substantial risk to public health, it is recommended that it be controlled under Schedule II of the 1971 Convention on Psychotropic Substances.

N-Ethylhexedrone

The chemical name for N-ethylhexedrone is 2-(ethylamino)-1-phenylhexan-1-one.

In common with other stimulants used non-medically, N-ethylhexedrone increases neuronal concentrations of the neurotransmitter dopamine. It also has effects on noradrenaline.

In preclinical models, N-ethylhexedrone has actions predictive of methamphetamine-like subjective effects and produces central nervous system stimulation. Users of the drug

report effects similar to other stimulants, including increased energy, mood elevation, perceptual changes and increased sociability.

Information on the adverse effects is limited, but the effects reported are consistent with the effects of stimulant drugs and include tachycardia, tremor, seizures and hyperthermia. N-ethylhexedrone has been implicated as the cause of at least one fatality and of cases of impaired driving. It has been detected in used syringes, indicating the potential for injection related health problems in association with its use.

N-ethylhexedrone has been detected in 30 countries across different regions. It has no veterinary or medical use.

Based on its mechanism of action and effects, N-ethylhexedrone has the ability to produce a state of dependence and central nervous system stimulation. There is evidence that it is abused so as to constitute a public health and social problem. It is therefore recommended that N-ethylhexedrone be controlled under the 1971 Convention on Psychotropic Substances. As it has no medical use and its use constitutes a substantial risk to public health, it is recommended that it be controlled under Schedule II of the 1971 Convention on Psychotropic Substances.

Alpha-PHP

Alpha-PHP is also known as alpha-pyrrolidinohexanophenone. Its chemical name is 1-phenyl-2-(pyrrolidine-1-yl)hexan-1-one.

In common with other stimulants used non-medically, alpha-PHP increases neuronal concentrations of the neurotransmitter dopamine. It also has effects on noradrenaline.

In animal models, alpha-PHP has effects predictive of abuse and dependence potential, including actions predictive of methamphetamine-like subjective effects and reinforcing properties. It produces central nervous system stimulation in animals. Users of the drug report effects similar to other stimulants, including increased energy, mood elevation, perceptual changes and appetite suppression.

The adverse effects of the drug include tachycardia, paranoia and hallucinations. It has been identified as the cause of multiple deaths and clinical admissions.

Alpha-PHP has been detected in over 20 countries across different regions. It has no veterinary or medical use.

Based on its mechanism of action and effects, alpha-PHP has the ability to produce a state of dependence and central nervous system stimulation. There is evidence that it is abused so as to constitute a public health and social problem. It is therefore recommended that alpha-PHP be controlled under the 1971 Convention on Psychotropic Substances. As it has no medical use and its use constitutes a substantial risk to public health, it is recommended that it be controlled under Schedule II of the 1971 Convention on Psychotropic Substances.

Substances recommended to be scheduled in Schedule IV of the Convention on Psychotropic Substances (1971):

Flualprazolam

The chemical name for flualprazolam is 8-chloro-6-(2-fluorophenyl)-1-methyl-4*H*-benzo[*f*][1,2,4]triazolo[4,3-*a*][1,4]diazepine.

Flualprazolam is chemically similar to the benzodiazepines alprazolam and triazolam and in animal models it produces the typical benzodiazepine effects of sedation, muscle relaxation and anticonvulsant actions. Users have reported effects such as sedation, disinhibition and memory impairment that are common with benzodiazepines and have described it as similar to alprazolam and clonazepam.

In toxicology reports, flualprazolam has been documented as contributing to forensic and clinical events, including fatal and non-fatal intoxications and cases of driving under the influence. It has no medical use.

There is limited information on the extent of global use of flualprazolam with most reported identifications coming from two countries. There are numerous reports of its use on internet forums.

Based on its capacity to produce a state of dependence and central nervous system depression similar to the controlled benzodiazepine alprazolam, which is controlled under Schedule IV of the1971 Convention on Psychotropic Substances, as well as evidence that it is likely to be abused so as to constitute a public health and social problem, it is recommended that flualprazolam be controlled under Schedule IV of the 1971 Convention on Psychotropic Substances.

Etizolam

The chemical name for etizolam is 4-(2-chlorophenyl)-2-ethyl-9-methyl-6H-thieno[3,2-f][1,2,4]triazolo[4,3-a][1,4]diazepine. It has been previously reviewed by the ECDD, most recently at its 39th meeting in 2017.

Etizolam is an agonist at the benzodiazepine site on the GABAA receptor, inducing central nervous system depression. It has typical benzodiazepine effects that include sedation and muscle relaxation as well as anxiolytic and anticonvulsant actions. Adverse effects include drowsiness, ataxia, slurred speech, cognitive impairment and loss of consciousness.

Etizolam use has been associated with a large number of deaths, generally along with another drug or drugs. Benzodiazepines such as etizolam pose a significant risk when combined with opioids as they can potentiate the respiratory depressant effects of opioids.

Etizolam has been used in a number of countries and in some of these countries has been associated with reports of fatal and no-fatal intoxication as well as cases of driving under the influence. It has marketing authorization for medical use in three countries.

Based on its capacity to produce a state of dependence and central nervous system depression similar to other controlled benzodiazepines, as well as evidence that it is abused so as to constitute a public health and social problem, it is recommended that etizolam be controlled under Schedule IV of the 1971 Convention on Psychotropic Substances.

Substance recommended for surveillance:

APINACA

The chemical name for APINACA (also known as AKB-48) is N-(adamantan-1-yl)-1-pentyl-1H-indazole-3-carboxamide. It was previously reviewed at the 36th meeting of the WHO Expert Committee on Drug Dependence in 2014 but was not recommended for control at that time.

In common with other synthetic cannabinoids, APINACA is an agonist at the CB1 receptor that mediates the psychoactive effects of cannabinoids. In animal studies it produced central nervous system depression and had actions predictive of cannabinoid-like subjective effects.

APINACA produces neurological signs in animals that include seizures, hyperreflexia and aggression. However, there are no studies of the adverse effects of APINACA in human users of the drug and no available information regarding fatal or non-fatal intoxications.

APINACA use has been reported in a number of countries but its use has been declining since 2015 and it is now detected very infrequently if at all.

Owing to the lack of significantly more information since the review conducted by the 36th ECDD in 2014, and considering the current insufficiency of data regarding dependence, abuse and risks to public health (including risks to the

individual), the Committee recommended that APINACA be kept under surveillance.

Preparations recommended for critical review:

—Preparations of acetyldihydrocodeine, codeine, dihydrocodeine, ethylmorphine, nicocodine, nicodicodine, norcodeine and pholcodine listed in Schedule III of the 1961 Single Convention on Narcotic Drugs

The Committee considered a pre-review of the following preparations listed in Schedule III of the 1961 Single Convention on Narcotic Drugs: acetyldihydrocodeine, codeine, dihydrocodeine, ethylmorphine, nicocodine, nicodicodine, norcodeine and pholcodine, when compounded with one or more other ingredients and containing not more than 100 milligrams of the drug per dosage unit and with a concentration of not more than 2.5 per cent in undivided preparations.

These preparations have not been previously reviewed. The ECDD Secretariat commissioned a pre-review of these preparations, on the basis of concerns regarding abuse and harm of preparations of codeine that were conveyed to the Secretariat. As many of the substances listed in the first entry of Schedule III of the 1961 Single Convention are chemically and pharmacologically similar to codeine, the eight preparations were considered together.

These preparations have been marketed and used as antitussive medicines and analgesics for mild to moderate pain. In many countries these preparations are available without medical prescription. The active substances in the preparations are opioids and all substances themselves are controlled under Schedule II of the 1961 Single Convention on Narcotic Drugs. Misuse of and dependence on preparations of codeine and dihydrocodeine have been well described. The pre-review suggested that there may be less evidence regarding the other preparations. The Committee also noted evidence of separation of the opioid drug such as codeine from the other ingredients in these preparations by people misusing these preparations.

Based on the evidence available regarding dependence, abuse and risks to public health, the Committee recommended a critical review of the following preparations included in Schedule III of the 1961 Convention at a future meeting: acetyldihydrocodeine, codeine, dihydrocodeine, ethylmorphine, nicocodine, nicodicodine, norcodeine, and pholcodine when compounded with one or more other ingredients and containing not more than 100 milligrams of the drug per dosage unit and with a concentration of not more than 2.5 per cent in undivided preparations.

III. Discussion

Although WHO has made specific scheduling recommendations for each of the drug substances, the CND is not obliged to follow the WHO recommendations. Options available to the CND for substances considered for control under the 1971 Convention include the following: (1) Accept the WHO recommendations; (2) accept the recommendations to control but control the drug substance in a schedule other than that recommended; or (3) reject the recommendations entirely.

Crotonyl fentanyl (chemical name: *N*-(1-phenethylpiperidin-4-yl)-*N*-phenylbut-2-enamide) and valeryl fentanyl (chemical name: *N*-(1-phenethylpiperidin-4-yl)-*N*-phenylpentanamide) are synthetic opioids that have a pharmacological profile similar to other Schedule I and II opioid substances controlled under the CSA such as cyclopropyl fentanyl, fentanyl, and other related mu-opioid receptor agonist substances. They are clandestinely produced and associated with adverse events typically associated with opioid use such as respiratory depression, anxiety, constipation, tiredness, hallucinations, and withdrawal. Crotonyl fentanyl and valeryl fentanyl have been encountered by law enforcement and/or reported in the scientific literature by public health officials as being illicitly distributed and abused. Crotonyl fentanyl and valeryl fentanyl have no commercial or currently accepted medical uses in the United States. On February 1, 2018, valeryl fentanyl was temporarily placed into Schedule I of the CSA. The chemical structure of crotonyl fentanyl defines it as a fentanyl-related substance, as defined in 21 CFR 1308.11(h)(30); therefore, crotonyl fentanyl was temporarily controlled as a Schedule I controlled substance under the CSA as of February 6, 2018. As such, additional controls will be necessary to fulfill United States obligations if crotonyl fentanyl and valeryl fentanyl are placed in Schedules I of the Single Convention on Narcotic Drugs (1961).

DOC (chemical names: 2,5-Dimethoxy-4-chloroamfetamine; 2,5-dimethoxy-4-chloroamphetamine; 1-(4-chloro-2,5-dimethoxyphenyl)propan-2-amine) is a hallucinogenic substance with psychedelic effects. Law enforcement has encountered DOC in tablet, capsule, powder, liquid, and blotter paper forms. Its use has been associated with at least one death. DOC has no currently accepted medical use in treatment in the United States. DOC is not controlled under the CSA but is a Schedule I controlled substance in the state of Florida. As such, additional permanent controls will be necessary to fulfill United States obligations if DOC is controlled under Schedule I of the 1971 Convention.

AB-FUBINACA (chemical name: *N*-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1*H*-indazole-3-carboxamide) is a synthetic cannabinoid that is a potent full agonist at CB1 receptors. This substance functionally (biologically) mimics the effects of structurally unrelated THC, a Schedule I substance under the CSA, and the main psychoactive chemical constituent in cannabis. Synthetic cannabinoids have been marketed under the guise of ''herbal incense,'' and promoted by drug traffickers as legal alternatives to cannabis. AB-FUBINACA use has been associated with serious adverse events including death in the United States. There are no commercial or approved medical uses for AB-FUBINACA. On September 6, 2016, AB-FUBINACA was permanently placed as a Schedule I controlled substance under the CSA. As such, additional permanent controls will not be necessary to fulfill United States obligations if AB-FUBINACA is controlled under Schedule II of the 1971 Convention.

5F-AMB (5F-AMB-PINACA, 5F-MMB-PINACA) (chemical name: methyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-carboxamido)-3-methylbutanoate) is a synthetic cannabinoid that is a potent full agonist at CB1 receptors. This substance functionally (biologically) mimics the effects of THC, a Schedule I substance under the CSA, and the main psychoactive chemical constituent in cannabis. Synthetic cannabinoids have been marketed under the guise of ''herbal incense,'' and promoted by drug traffickers as legal alternatives to cannabis. The use of synthetic cannabinoids, including, 5F–AMB has been associated with nausea and vomiting, shortness of breath or depressed breathing, hypertension, tachycardia, chest pain, muscle twitching, acute renal failure, anxiety, agitation, psychosis, suicidal ideation, and/or cognitive impairment. There are no commercial or approved medical uses for 5F–AMB. On April 8, 2019, a Drug Enforcement Administration Notice of Proposed Rulemaking proposed permanently placing 5F–AMB

into Schedule I of the CSA. As such, additional permanent controls will not be necessary to fulfill United States obligations if 5F–AMB is controlled under Schedule II of the 1971 Convention.

5F-MDMB-PICA (5F-MDMB-2201) (chemical name: methyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate) is a synthetic cannabinoid that has been sold online and used to mimic the biological effects of THC, the main psychoactive chemical constituent in cannabis. Research and clinical reports have demonstrated that synthetic cannabinoids are applied onto plant material so that the material may be smoked as users attempt to obtain a euphoric and psychoactive ''high.'' Synthetic cannabinoids have been marketed under the guise of ''herbal incense,'' and promoted by drug traffickers as legal alternatives to cannabis. 5F-MDMB-PICA has been associated with law enforcement seizures and overdoses requiring emergency medical intervention. On April 16, 2019, 5F-MDMB-PICA was temporarily controlled as a Schedule I substance under the CSA. As such, additional permanent controls will be necessary to fulfill United States obligations if 5F-MDMB-PICA is controlled under Schedule II of the 1971 Convention.

4F-MDMB-BINACA (4F-ADB) (chemical name: methyl 2-(1-(4-fluorobutyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate) is a synthetic cannabinoid that is a potent full agonist at CB1 receptors. This substance functionally (biologically) mimics the effects of THC, a Schedule I substance, and the main psychoactive constituent in cannabis. 4F-MDMB-BINACA has been encountered in numerous synthetic cannabinoid products that are smoked for their psychoactive effects. Multiple law enforcement encounters of 4F-MDMB-BINACA have been reported involving overdose deaths, illicit use, and seizures of drug evidence between December 2018 and February 2019. There are no commercial or approved medical uses for 4F-MDMB-BINACA. 4F-MDMB-BINACA is a positional isomer of 5F-AMB (chemical name: methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate), as defined by 21 CFR 1300.01, and has been a Schedule I controlled substance under the CSA since April 10, 2017. As such, additional permanent controls will not be necessary to fulfill United States obligations if 4F-MDMB-BINACA is controlled under Schedule II of the 1971 Convention.

4-CMC (4-chloromethcathinone; clefedrone, clephedrone) (chemical name: 1-(4-chlorophenyl)-2-(methylamino)propan-1-one) is a synthetic cathinone. 4-CMC produces central nervous system stimulant effects and is abused for its psychoactive properties. 4-CMC abuse has been associated with adverse health effects. 4-CMC has no currently accepted medical use in treatment in the United States. 4-CMC is not controlled under the CSA, but it is considered a Schedule I controlled substance by a number of states in the United States. As such, additional permanent controls will be necessary to fulfill United States obligations if 4-CMC is controlled under Schedule II of the 1971 Convention.

N-Ethylhexedrone (chemical name: 2-(ethylamino)-1-phenylhexan-1-one; NEH, hexen, Ethyl-Hex) and *alpha*-PHP (chemical name: 1-phenyl-2-(pyrrolidin-1-yl)hexan-1-one; PV-7, α-pyrrolidinohexanophenone) are synthetic cathinones. *N*-Ethylhexedrone and *alpha*-PHP produce central nervous system stimulant effects and are abused for their psychoactive properties. *N*-Ethylhexedrone and *alpha*-PHP have been associated with adverse health effects leading to emergency department admissions, and deaths. *N*-Ethylhexedrone and *alpha*-PHP have no currently accepted medical use in treatment in the United States. On July 18, 2019, *N*-Ethylhexedrone and *alpha*-PHP were temporarily controlled as a Schedule I substance under the CSA. As such, additional permanent controls will be necessary to fulfill United States obligations if *N*-Ethylhexedrone and *alpha*-PHP are controlled under Schedule II of the 1971 Convention.

Flualprazolam and etizolam belong to a class of substances known as benzodiazepines. Benzodiazepines produce central nervous system depression and are commonly used to treat insomnia, anxiety, and seizure disorders. Etizolam is currently prescribed in some countries; however, neither drug substance is approved for medical use in the United States. Currently, flualprazolam and etizolam are not controlled under the CSA, but are controlled in a number of states in the United States. As such, additional permanent controls will be necessary to fulfill United States obligations if flualprazolam and etizolam are controlled under Schedule IV of the 1971 Convention.

FDA, on behalf of the Secretary of HHS, invites interested persons to submit comments on the notifications from the United Nations concerning these drug substances. FDA, in cooperation with the National Institute on Drug Abuse, will consider the comments on behalf of HHS in evaluating the WHO scheduling recommendations. Then, under section 201(d)(2)(B) of the CSA, HHS will recommend to the Secretary of State what position the United States should take when voting on the recommendations for control of substances under the 1971 Convention at the CND meeting in March 2020.

Comments regarding the WHO recommendations for control of crotonyl fentanyl and valeryl fentanyl; under the 1961 Single Convention will also be forwarded to the relevant Agencies for consideration in developing the United States position regarding narcotic substances at the CND meeting.

Dated: December 23, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–28269 Filed 12–30–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Advisory Council on Alzheimer's Research, Care, and Services; Meeting

AGENCY: Assistant Secretary for Planning and Evaluation, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces the public meeting of the Advisory Council on Alzheimer's Research, Care, and Services (Advisory Council). The Advisory Council provides advice on how to prevent or reduce the burden of Alzheimer's disease and related dementias on people with the disease and their caregivers. During the January 27, 2020 meeting, an invited panel will present lessons from epidemiology on understanding current rates of dementia, future trends, and potential preventive strategies. The Advisory Council will hear about the Department of Defense's Peer Reviewed Alzheimer's Research Program as well as an update on the recommendations from the Alzheimer's Disease-Related Dementias Research Summit. Federal workgroups will also provide updates on work completed in the last quarter.

DATES: The meeting will be held on January 27, 2020 from 9:30 a.m. to 4:15 p.m. EST.

ADDRESSES: The meeting will be held in Room 800 in the Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201.

Comments: Time is allocated on the agenda to hear public comments. The time for oral comments will be limited

to three (3) minutes per individual. In lieu of oral comments, formal written comments may be submitted for the record to Helen Lamont, Ph.D., OASPE, 200 Independence Avenue SW, Room 424E, Washington, DC 20201. Comments may also be sent to *napa@hhs.gov.* Those submitting written comments should identify themselves and any relevant organizational affiliations.

FOR FURTHER INFORMATION CONTACT: Helen Lamont, 202–260–6075, *helen.lamont@hhs.gov. Note*: Seating may be limited. Those wishing to attend the meeting must send an email to *napa@hhs.gov* and put ''January 27 Meeting Attendance'' in the subject line by Friday, January 17 so that their names may be put on a list of expected attendees and forwarded to the security officers at the Department of Health and Human Services. Any interested member of the public who is a non-U.S. citizen should include this information at the time of registration to ensure that the appropriate security procedure to gain entry to the building is carried out. Although the meeting is open to the public, procedures governing security and the entrance to Federal buildings may change without notice. If you wish to make a public comment, you must note that within your email.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)). Topics of the Meeting: During the January 27, 2020 meeting, an invited panel will present lessons from epidemiology on understanding current rates of dementia, future trends, and potential preventive strategies. The Advisory Council will hear about the Department of Defense's Peer Reviewed Alzheimer's Research Program as well as an update on the recommendations from the Alzheimer's Disease Related Dementias Research Summit.

Procedure and Agenda: This meeting is open to the public. Please allow 30 minutes to go through security and walk to the meeting room. The meeting will also be webcast at *www.hhs.gov/live.*

Authority: 42 U.S.C. 11225; Section 2(e)(3) of the National Alzheimer's Project Act. The panel is governed by provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

Dated: December 19, 2019.

Brenda Destro,

Deputy Assistant Secretary for Planning and Evaluation, Office of Human Services Policy.

[FR Doc. 2019–28268 Filed 12–30–19; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Dental and Craniofacial Research Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Dental and Craniofacial Research Council.

Date: January 29, 2020.

Open: 8:30 a.m. to 12:00 p.m.

Agenda: Report to the Director, NIDCR.

Place: National Institutes of Health, Building 45, Conference Room E1/E2, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 45, Conference Room E1/E2, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Alicia J. Dombroski, Ph.D., Director, Division of Extramural Activities, National Institute of Dental and Craniofacial Research, National Institutes of Health, Bethesda, MD 20892, 301–594–4805, *adombroski@nidcr.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nidcr.nih.gov/about,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: December 23, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–28244 Filed 12–30–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Reproductive Biology.

Date: January 13, 2020.

Time: 1:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Hui Chen, MD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, Bethesda, MD 20892, 301–435–1044, *chenhui@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Psychosocial Risk and Disease Prevention Study Section.

Date: January 27–28, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westgate Hotel, 1055 Second Avenue, San Diego, CA 92101.

Contact Person: Stacey FitzSimmons, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7808, Bethesda, MD 20892, (301) 451–9956, *fitzsimmonss@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Psychosocial Risk and Disease Prevention (PRDP).

Date: January 27, 2020.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westgate Hotel, 1055 Second Avenue, San Diego, CA 92101.

Contact Person: Weijia Ni, Ph.D., Chief/Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3100, MSC 7808, Bethesda, MD 20892, (301) 594–3292, *niw@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, Naonal Institutes of Health, HHS)

Dated: December 23, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–28245 Filed 12–30–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; Mechanistic Ancillary Studies Review Meeting.

Date: February 20, 2020.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Arthritis, Musculoskeletal and Skin Diseases, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Yasuko Furumoto, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, 6701 Democracy Boulevard, Suite 820, Bethesda, MD 20892, 301–827–7835, *yasuko.furumoto@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: December 23, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–28243 Filed 12–30–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This notice advises the public that the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties will remain the same from the previous quarter. For the calendar quarter beginning January 1, 2020, the interest rates for overpayments will be 4 percent for corporations and 5 percent for non-corporations, and the interest rate for underpayments will be 5 percent for both corporations and non-corporations. This notice is published for the convenience of the importing public and U.S. Customs and Border Protection personnel.

DATES: The rates announced in this notice are applicable as of January 1, 2020.

FOR FURTHER INFORMATION CONTACT: Bruce Ingalls, Revenue Division, Collection Refunds & Analysis Branch, 6650 Telecom Drive, Suite #100, Indianapolis, Indiana 46278; telephone (317) 298–1107.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 provides different interest rates applicable to overpayments: One for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2019–28, the IRS determined the rates of interest for the calendar quarter beginning January 1, 2020, and ending on March 31, 2020. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (2%) plus three percentage points (3%) for a total of five percent (5%) for both corporations and non-corporations. For corporate overpayments, the rate is the Federal short-term rate (2%) plus two percentage points (2%) for a total of four percent (4%). For overpayments made by non-corporations, the rate is the Federal short-term rate (2%) plus three percentage points (3%) for a total of five percent (5%). These interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties are remaining the same from the previous quarter. These interest rates are subject to change for the calendar quarter beginning April 1, 2020, and ending on June 30, 2020.

For the convenience of the importing public and U.S. Customs and Border Protection personnel, the following list of IRS interest rates used, covering the period from July of 1974 to date, to calculate interest on overdue accounts and refunds of customs duties, is published in summary format.

Beginning date	Ending date	Under-payments (percent)	Over-payments (percent)	Corporate overpayments (Eff. 1–1–99) (percent)
070174	063075	6	6	
070175	013176	9	9	
020176	013178	7	7	

Beginning date	Ending date	Under-payments (percent)	Over-payments (percent)	Corporate overpayments (Eff. 1–1–99) (percent)
020178	013180	6	6	
020180	013182	12	12	
020182	123182	20	20	
010183	063083	16	16	
070183	123184	11	11	
010185	063085	13	13	
070185	123185	11	11	
010186	063086	10	10	
070186	123186	9	9	
010187	093087	9	8	
100187	123187	10	9	
010188	033188	11	10	
040188	093088	10	9	
100188	033189	11	10	
040189	093089	12	11	
100189	033191	11	10	
040191	123191	10	9	
010192	033192	9	8	
040192	093092	8	7	
100192	063094	7	6	
070194	093094	8	7	
100194	033195	9	8	
040195	063095	10	9	
070195	033196	9	8	
040196	063096	8	7	
070196	033198	9	8	
040198	123198	8	7	
010199	033199	7	7	6
040199	033100	8	8	7
040100	033101	9	9	8
040101	063001	8	8	7
070101	123101	7	7	6
010102	123102	6	6	5
010103	093003	5	5	4
100103	033104	4	4	3
040104	063004	5	5	4
070104	093004	4	4	3
100104	033105	5	5	4
040105	093005	6	6	5
100105	063006	7	7	6
070106	123107	8	8	7
010108	033108	7	7	6
040108	063008	6	6	5
070108	093008	5	5	4
100108	123108	6	6	5
010109	033109	5	5	4
040109	123110	4	4	3
010111	033111	3	3	2
040111	093011	4	4	3
100111	033116	3	3	2
040116	033118	4	4	3
040118	123118	5	5	4
010119	063019	6	6	5
070119	033120	5	5	4

Dated: December 23, 2019.

Samuel D. Grable,

Chief Financial Officer, U.S. Customs and Border Protection.

[FR Doc. 2019–28220 Filed 12–30–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2019–N166; FXES11130800000–201–FF08E00000]

Endangered and Threatened Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation or survival of endangered or threatened species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the

requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments on or before January 30, 2020.

ADDRESSES: *Document availability and comment submission:* Submit requests for copies of the applications and related documents and submit any comments by one of the following methods. All requests and comments should specify the applicant name(s) and application number(s) (*e.g.,* TEXXXXXX).

- *Email: permitsr8es@fws.gov.*
- *U.S. Mail:* Daniel Marquez, Endangered Species Program Manager, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825.

FOR FURTHER INFORMATION CONTACT: Daniel Marquez, via phone at 760–431–9440, via email at *permitsr8es@fws.gov,* or via the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications for permits under section 10(a)(1)(A) of the Endangered Species Act, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The requested permits would allow the applicants to conduct activities intended to promote recovery of species that are listed as endangered or threatened under the ESA.

Background

With some exceptions, the ESA prohibits activities that constitute take of listed species unless a Federal permit is issued that allows such activity. The ESA's definition of ''take'' includes such activities as pursuing, harassing, trapping, capturing, or collecting in addition to hunting, shooting, harming, wounding, or killing.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered or threatened species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. These activities often include such prohibited actions as capture and collection. Our regulations implementing section 10(a)(1)(A) for these permits are found in the Code of Federal Regulations at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild. The ESA requires that we invite public comment before issuing these permits. Accordingly, we invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies.

Application No.	Applicant, city, state	Species	Location	Activity	Type of take	Permit action
TE–20160B	Brennan Vettes, San Diego, California.	• Southwestern willow flycatcher (*Empidonax traillii extimus*).	CA	Survey	Play taped vocalizations.	Amend.
TE–56727D	Northcoast Regional Land Trust, Arcata, California.	• Tidewater goby (*Eucyclogobius newberryi*)	CA	Survey	Capture, handle, and release.	New.
TE–56730D	Cherie Lewellen, Oceanside, California.	• Conservancy fairy shrimp (*Branchinecta conservatio*). • Longhorn fairy shrimp (*Branchinecta longiantenna*). • San Diego fairy shrimp (*Branchinecta sandiegonensis*). • Riverside fairy shrimp (*Streptocephalus woottoni*). • Vernal pool tadpole shrimp (*Lepidurus packardi*).	CA	Survey	Capture, handle, release, and collect vouchers.	New.
TE–56732D	Jasmine Bakker, Santee, California.	• Quino checkerspot butterfly (*Euphydryas editha quino*).	CA	Survey	Pursue	New.
TE–095858	Arianne Preite, Orange, California.	• Conservancy fairy shrimp (*Branchinecta conservatio*). • Longhorn fairy shrimp (*Branchinecta longiantenna*). • San Diego fairy shrimp (*Branchinecta sandiegonensis*). • Riverside fairy shrimp (*Streptocephalus woottoni*). • Vernal pool tadpole shrimp (*Lepidurus packardi*). • San Joaquin kit fox (*Vulpes macrotis mutica*).	CA	Survey	Capture, handle, release, and collect vouchers.	Amend.
TE–56729D	Katie Brown, Paso Robles, California.	• Conservancy fairy shrimp (*Branchinecta conservatio*). • Longhorn fairy shrimp (*Branchinecta longiantenna*). • San Diego fairy shrimp (*Branchinecta sandiegonensis*). • Riverside fairy shrimp (*Streptocephalus woottoni*). • Vernal pool tadpole shrimp (*Lepidurus packardi*).	CA	Survey	Capture, handle, release, and collect vouchers.	New.

Application No.	Applicant, city, state	Species	Location	Activity	Type of take	Permit action
TE–56760D ..	Jason Allen, Bonita, California.	• Conservancy fairy shrimp (*Branchinecta conservatio*). • Longhorn fairy shrimp (*Branchinecta longiantenna*). • San Diego fairy shrimp (*Branchinecta sandiegonensis*). • Riverside fairy shrimp (*Streptocephalus woottoni*). • Vernal pool tadpole shrimp (*Lepidurus packardi*).	CA	Survey	Capture, handle, release, and collect vouchers.	New.
TE–60213D ..	Kathleen Pollett, San Diego, California.	• Quino checkerspot butterfly (*Euphydryas editha quino*).	CA	Survey and perform habitat restoration.	Pursue and disturb habitat.	New.
TE–56489B ..	Jonathan Koehler, Napa, California.	• California freshwater shrimp (*Syncaris pacifica*).	CA	Survey	Capture, handle, and release.	Renew.
TE–213308 ..	Joseph Didonato, Alameda, California.	• Salt marsh harvest mouse (*Reithrodontomys raviventris*).	CA	Survey	Collect tissue to determine species.	Amend.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Karen Jensen,

Acting Chief of Ecological Services, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2019–28248 Filed 12–30–19; 8:45 am]

BILLING CODE 4333–15–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1121]

Certain Earpiece Devices and Components Thereof; Commission Determination Not To Review an Initial Determination Granting a Motion To Terminate the Investigation With Respect to U.S. Patent No. 9,398,364; Termination of the Investigation in Its Entirety

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 20) of the presiding administrative law judge (''ALJ''), granting an unopposed motion to terminate the investigation based on withdrawal of the complaint with respect to U.S. Patent No. 9,398,364 (''the '364 patent''). The investigation is terminated in its entirety.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2392. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 29, 2018, based on a complaint filed on behalf of Bose Corporation (''Bose'') of Framingham, Massachusetts. 83 FR 30776 (Jun. 29, 2018). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337'') based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain earpiece devices and components thereof by reason of infringement of one or more claims of U.S. Patent Nos.: 9,036,852 (''the '852 patent''); 9,036,853 (''the '853 patent''); 9,042,590 (''the '590 patent''); 8,311,253 (''the '253 patent''); 8,249,287 (''the '287 patent''); and the '364 patent. The complaint further alleges that an industry in the United States exists as required by section 337. The notice of investigation named fourteen respondents. The Office of Unfair Import Investigations was also named as a party in this investigation.

On October 31, 2019, the Commission issued a general exclusion order, a limited exclusion order, and cease and desist orders with respect to one or more asserted claims of the '852, '853, '590, '287, and '253 patents. The investigation was thereby terminated with respect to these five patents.

Also, on the October 31, 2019, the Commission remanded the investigation in part to the ALJ for further proceedings with respect to the '364 patent. Commissioner Schmidtlein did not join the decision to remand the investigation. Instead, she would have affirmed on modified grounds the determination that Bose demonstrated the existence of a domestic industry under subparagraphs 337(a)(3)(A) and (B) with respect to the '364 patent.

On November 20, 2019, Bose filed an unopposed motion to terminate the investigation based on withdrawal of the complaint with respect to the '364 patent.

On December 2, 2019, the ALJ issued the subject ID (Order No. 20), granting Bose's motion to terminate the investigation pursuant to Commission Rule 210.21(a)(1), 19 CFR 210.21(a)(1). The ALJ found that the motion complies with the Commission Rules, and that no extraordinary circumstances prohibit the termination of this investigation as requested by Bose. *See* Order No. 20 at 3 (Dec. 2, 2019).

No petitions for review were filed. The Commission has determined not to review the subject ID. The investigation is terminated in its entirety.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: December 23, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–28184 Filed 12–30–19; 8:45 am]

BILLING CODE 7020–02–P

NATIONAL CREDIT UNION ADMINISTRATION

Submission for OMB Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice.

SUMMARY: The National Credit Union Administration (NCUA) will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice.

DATES: Comments should be received on or before January 30, 2020 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimates, or any other aspect of the information collections, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NCUA, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) NCUA PRA Clearance Officer, 1775 Duke Street, Suite 6032, Alexandria, VA 22314, or email at *PRAComments@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission may be obtained by contacting Dawn Wolfgang at (703) 548–2279, emailing *PRAComments@ncua.gov,* or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0098.

Type of Review: Extension of a currently approval collection.

Title: Advertising of Excess Insurance, 12 CFR part 740.3.

Abstract: Requirements of 12 CFR 740.3, Advertising of excess insurance, prescribes that federally insured credit unions must disclose in advertising the share or savings account insurance provided by a party other than NCUA. This disclosure statement must include the identity of the carrier, the type and amount of such insurance and must avoid any statement or implication that the carrier is affiliated with NCUA or the federal government. The disclosure requirements under § 740.3 are necessary to ensure that share account holders are aware that their accounts are insured by carriers other than the NCUA.

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 291.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on December 24, 2019.

Dated: December 24, 2019.

Mackie I. Malaka,

NCUA PRA Clearance Officer.

[FR Doc. 2019–28240 Filed 12–30–19; 8:45 am]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. IA–19–027–EA: ASLBP No. 20–963–01–EA–BD01]

In The Matter of Thomas B. Saunders: Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission, *see* 37 FR 28710 (Dec. 29, 1972), and the Commission's regulations, *see, e.g.,* 10 CFR 2.104, 2.105, 2.300, 2.309, 2.313, 2.318, 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over the following proceeding:

Thomas B. Saunders

(Confirmatory Order)

This Board is being established pursuant to a hearing request submitted by Leonard Sparks in response to Confirmatory Order IA–19–027, ''In the Matter of Thomas B. Saunders,'' issued on October 21, 2019 by the NRC Office of Enforcement, and published in the **Federal Register**. *See* 84 FR 57778 (Oct. 28, 2019).

The Board is comprised of the following Administrative Judges:

E. Roy Hawkens, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

Michael M. Gibson, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

Dr. Sue H. Abreu, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

All correspondence, documents, and other materials shall be filed in accordance with the NRC E-Filing rule. *See* 10 CFR 2.302.

Rockville, Maryland.

Dated: December 23, 2019.

Edward R. Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 2019–28228 Filed 12–30–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of December 30, 2019, January 6, 13, 20, 27, February 3, 2020.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

Week of December 30, 2019

There are no meetings scheduled for the week of December 30, 2019.

Week of January 6, 2020—Tentative

There are no meetings scheduled for the week of January 6, 2020.

Week of January 13, 2020—Tentative

There are no meetings scheduled for the week of January 13, 2020.

Week of January 20, 2020—Tentative

There are no meetings scheduled for the week of January 20, 2020.

Week of January 27, 2020—Tentative

Tuesday, January 28, 2020

9:00 a.m. Discussion of Medical Uses of Radioactive Materials (Public Meeting) (Contact: Lisa Dimmick: 301–415–0694)

This meeting will be webcast live at the Web address—*https://www.nrc.gov/*.

Week of February 3, 2020—Tentative

Thursday, February 6, 2020

9:00 a.m. Briefing on Advanced Reactors and New Reactor Topics (Public Meeting) (Contact: Luis Betancourt: 301–415–6146)

This meeting will be webcast live at the Web address—*https://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: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or by email at *Wendy.Moore@nrc.gov* or *Tyesha.Bush@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated at Rockville, Maryland, this 27th day of December 2019.

For the Nuclear Regulatory Commission.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2019–28321 Filed 12–27–19; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0252]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Biweekly notice.

SUMMARY: Pursuant to the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person. This biweekly notice includes all amendments issued, or proposed to be issued, from December 3, 2019, to December 16, 2019. This notice also incorporates the revised biweekly format as noticed in the **Federal Register** on December 3, 2019. The last biweekly notice was published on December 17, 2019.

DATES: Comments must be filed by January 30, 2020. A request for a hearing or petitions for leave to intervene must be filed by March 2, 2020.

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

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0252. Address questions about NRC Docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Lynn Ronewicz, Office of Nuclear Reactor Regulation, 301–415–1927, email: *Lynn.Ronewicz@nrc.gov,* U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0252, when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0252.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2019–0252, facility name, unit nos., docket no., application date, and subject, in your comment submission.

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

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

submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

I. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

For the facility-specific amendment requests shown below, the Commission finds that the licensee's analyses provided, consistent with title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.91, is sufficient to support the proposed determination that these amendment requests involve No Significant Hazards Consideration (NSHC). Under the Commission's regulations in 10 CFR 50.92, operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves NSHC. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final NSHC determination, any hearing will take place after issuance. The Commission expects that the need to take action on an amendment before 60 days have elapsed will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *https://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)''

section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application,

participants are requested not to include copyrighted materials in their submission.

The table below provides the plant name, docket number, date of application, ADAMS accession number, and location in the application of the licensee's proposed NSHC determination. For further details with respect to these license amendment applications, see the application for amendment which is available for public inspection in ADAMS and at the NRC's PDR. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

TABLE 1—LICENSE AMENDMENT REQUEST(S)

Dominion Nuclear Connecticut, Inc.; Millstone Power Station, Unit No. 2; New London County, WI	
Application Date	August 14, 2019.
ADAMS Accession No	ML19234A111.
Location in Application of NSHC	Attachment 1, Page 53 of 58.
Brief Description of Amendments	The proposed amendment would revise Technical Specification 3.8.1.1, ''A.C. Sources—Operating,'' to add a permanent Required Action a.3 that would provide an option to extend the allowed outage time (AOT) from 72 hours to 10 days for one inoperable offsite circuit. In addition, the licensee proposed a one-time exception to the new proposed Required Action a.3 that would extend the AOT to 35 days for one inoperable offsite circuit. One-time use of the 35-day AOT would allow replacement of the Millstone, Unit No. 3, 'A' reserve station service transformer, its associated equipment, and other 345 kV south bus switchyard components that are nearing the end of their dependable service life. This work is planned to take place no later than the fall 2023 outage (3R22) for Millstone, Unit No. 3.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address.	Lillian M. Cuoco, Esq., Senior Counsel, Dominion Energy, Inc., 120 Tredegar Street, RS–2, Richmond, VA 23219.
Docket Nos	50–336.
NRC Project Manager, Telephone Number.	Richard Guzman, 301–415–1030.
Duke Energy Progress, LLC; Shearon Harris Nuclear Power Plant, Unit 1; Brunswick County, NC	
Application Date	July 25, 2019.
ADAMS Accession No	ML19206A599.
Location in Application of NSHC	Enclosure 1, Page 22 of 25.
Brief Description of Amendments	The proposed amendment would revise Technical Specification (TS) 3/4.10.3, ''Special Test Exceptions, Physics Tests,'' and TS 3/4.10.4, ''Special Test Exceptions, Reactor Coolant Loops,'' to eliminate the ''within 12 hours'' restriction from Surveillance Requirement (SR) 4.10.3.2 for performing an Analog Channel Operational Test (ACOT) on the intermediate and power range neutron monitors prior to initiating physics tests and to eliminate the ''within 12 hours'' restriction from SR 4.10.4.2 for performing an ACOT on the intermediate range monitors, power range monitors, and P–7 interlock prior to initiating startup or physics tests, respectively.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address.	David Cummings, Associate General Counsel, Mail Code DEC45, 550 South Tryon Street, Charlotte NC 28202.
Docket Nos	50–400.
NRC Project Manager, Telephone Number.	Tanya Hood, 301–415–1387.
Florida Power & Light Company; Turkey Point Nuclear Generating Unit Nos. 3. and 4; Miami-Dade County, FL	
Application Date	November 4, 2019.
ADAMS Accession No	ML19315A003
Location in Application of NSHC	Enclosure 1, Page 14 of 33.
Brief Description of Amendments	The proposed change would revise the technical specifications (TSs) allowable and trip setpoint values for the Containment particulate (R–11) and gaseous (R–12) radioactivity monitor instrument channels by converting the measurement units from counts per minute to micro-curies per cubic centimeter (μCi/cc). The proposed change would additionally delete instrument numbers R–11 and R–12 in the Allowable Value and Trip Setpoint TS table. The proposed change would also exempt the containment purge supply and exhaust isolation valves from the containment ventilation isolation instrumentation requirements in several TS tables. The proposed change would modify the associated TS ACTION when both the R–11 and R–12 radioactivity monitors are inoperable by increasing the TS COMPLETION TIME from 7 to 30 days, providing an option to either analyze containment atmosphere grab samples or conduct reactor coolant system (RCS) water inventory balances, and decreasing the frequency of RCS water inventory balances from every 8 hours to once per 24 hours. The proposed change would modify the TS LCO for the Containment Ventilation System to require the containment purge supply and exhaust isolation valves be maintained administratively sealed closed and deactivated or the associated penetration(s) shall be isolated by blind flange and relatedly modifies the TS ACTIONS and surveillances (SRs) in recognition that the valves shall not be opened in MODES 1 thru 4. The proposed change would additionally modify the TS ACTIONS to allow 72-hours to restore the purge valves to within the leakage limit of the associate TS SR. The proposed change would add a footnote to the associated TS SRs when the associated purge supply and/or exhaust penetration(s) is isolated by blind flange. Lastly, the proposed change would additionally relocate the purge valve leakage rate criteria to licensee control.
Proposed Determination	NSHC.

TABLE 1—LICENSE AMENDMENT REQUEST(S)—Continued

Name of Attorney for Licensee, Mailing Address.	Debbie Hendell, Managing Attorney—Nuclear, Florida Power & Light Company, 700 Universe Blvd., MS LAW/JB, Juno Beach, FL 33408–0420.
Docket Nos	50–250, 50–251.
NRC Project Manager, Telephone Number.	Eva Brown, 301–415–2315.
Florida Power & Light Company; Turkey Point Nuclear Generating Unit Nos. 3. and 4; Miami-Dade County, FL	
Application Date	December 6, 2019.
ADAMS Accession No	ML19343A373.
Location in Application of NSHC	Page 4 of Enclosure 1.
Brief Description of Amendments	The proposed amendments would revise the Turkey Point Emergency Plan by adopting the methodology for developing an Emergency Action Level scheme as described in Nuclear Energy Institute (NEI) 99–01, Revision 6.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address.	Debbie Hendell, Managing Attorney—Nuclear, Florida Power & Light Company, 700 Universe Blvd., MS LAW/JB, Juno Beach, FL 33408–0420.
Docket Nos	50–250, 50–251.
NRC Project Manager, Telephone Number.	Eva Brown, 301–415–2315.
Indiana Michigan Power Company; Donald C. Cook Nuclear Plant, Units 1 and 2; Berrien County, MI	
Application Date	October 31, 2019.
ADAMS Accession No	ML19310D766.
Location in Application of NSHC	Enclosure 2, Page 2.
Brief Description of Amendments	The proposed amendments would revise the technical specifications to adopt Technical Specifications Task Force (TSTF) Traveler TSTF–569, ''Revise Response Time Testing Definition''.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address.	Robert B. Haemer, Senior Nuclear Counsel, Indiana Michigan Power Company, One Cook Place, Bridgman, MI 49106.
Docket Nos	50–315, 50–316.
NRC Project Manager, Telephone Number.	Robert Kuntz, 301–415–3733.
STP Nuclear Operating Company; South Texas Project, Units 1 and 2; Matagorda County, TX	
Application Date	September 26, 2019.
ADAMS Accession No	ML19269E978.
Location in Application of NSHC	Enclosure, Page 5 of 6.
Brief Description of Amendments	The amendments would revise the technical specifications (TSs) limit for reactor coolant system (RCS) gross specific activity with a new limit on RCS noble gas specific activity. The changes are consistent with NRC-approved Industry Technical Specifications Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–490, Revision 0, ''Deletion of E Bar Definition and Revision to RCS Specific Activity Tech Spec'' (ADAMS Accession No. ML052630462).
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address.	Kym Harshaw, Vice President and General Counsel, STP Nuclear Operating Company, P.O. Box 289, Wadsworth, TX 77483.
Docket Nos	50–498, 50–499.
NRC Project Manager, Telephone Number.	Dennis Galvin, 301–415–6256.
Virginia Electric and Power Company, North Anna Power Station, Units No. 1 and 2, Louisa County, Virginia	
Application Date	October 30, 2019.
ADAMS Accession No	ML19309D197.
Location in Application of NSHC	Page 4 of 6.
Brief Description of Amendments	The proposed amendment would add Westinghouse Topical Report WCAP–16996–P–A, ''Realistic LOCA Evaluation Methodology Applied to the Full Spectrum of Break Sizes (FULL SPECTRUM LOCA Methodology,'' to the list of approved analytical methods used to determine the core operating limits as listed in TS 5.6.5, ''Core Operating Limits Report (COLR)''.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address.	Lillian M. Cuoco, Esq., Senior Counsel, Dominion Energy, Inc., 120 Tredegar Street, RS–2, Richmond, VA 23219.
Docket Nos	50–338, 50–339.
NRC Project Manager, Telephone Number.	Ed Miller, (301) 415–2481.
Virginia Electric and Power Company; Surry Power Station, Unit Nos. 1 and 2; Surry County, VA	
Application Date	October 30, 2019.
ADAMS Accession No	ML19309D196.
Location in Application of NSHC	Attachment 1, Page 5 of 7.

TABLE 1—LICENSE AMENDMENT REQUEST(S)—Continued

Brief Description of Amendments	The proposed amendments would add Westinghouse Topical Report WCAP–16996–P–A, ''Realistic LOCA Evaluation Methodology Applied to the Full Spectrum of Break Sizes (FULL SPECTRUM LOCA Methodology),'' to the list of approved analytical methods used to determine the core operating limits as listed in TS 5.6.5, ''Core Operating Limits Report (COLR)''.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address.	Lillian M. Cuoco, Esq., Senior Counsel, Dominion Energy, Inc., 120 Tredegar Street, RS–2, Richmond, VA 23219.
Docket Nos	50–280, 50–281.
NRC Project Manager, Telephone Number.	G. Ed Miller, 301–415–2481.

III. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed NSHC determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action, see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation, and/or Environmental Assessment as indicated. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

TABLE 2—LICENSE AMENDMENT ISSUANCE(S)

Entergy Operations, Inc., System Energy Resources, Inc., Cooperative Energy, A Mississippi Electric Cooperative, and Entergy Mississippi, LLC; Grand Gulf Nuclear Station, Unit 1; Claiborne County, MS, Entergy Louisiana, LLC and Entergy Operations, Inc.; River Bend Station, Unit 1; West Feliciana Parish, LA	
Date Issued	December 11, 2019.
ADAMS Accession No	ML19308B107.
Amendment Nos	222 (Grand Gulf) and 200 (River Bend).
Brief Description of Amendments	The amendments to the technical specifications (TSs) for Grand Gulf Nuclear Station, Unit 1 (Grand Gulf), and River Bend Station, Unit 1 (River Bend), revised the reactor core safety limit for the minimum critical power ratio. The TS requirements for the core operating limits report were also modified. The changes are consistent with NRC-approved Technical Specifications Task Force (TSTF) Traveler TSTF–564, Revision 2, ''Safety Limit MCPR [Minimum Critical Power Ratio]'' (ADAMS Package Accession No. ML18299A048).
Docket Nos	50–416, 50–458.
Exelon Generation Company, LLC; Dresden Nuclear Power Station, Units 2 and 3; Grundy County, IL, Exelon Generation Company, LLC; Quad Cities Nuclear Power Station, Units 1 and 2; Rock Island County, IL	
Date Issued	December 4, 2019.
ADAMS Accession No	ML19301A339.
Amendment Nos	263 and 256 (Dresden, Units 2 and 3); 276 and 271 (Quad Cities, Units 1 and 2).
Brief Description of Amendments	The amendments revised the technical specifications for both the single recirculation loop and two recirculation loop Safety Limit Minimum Critical Power Ratio (SLMCPR) limits for the Dresden and Quad Cities units. The revised limits decrease the SLMCPR limits, which improves operational flexibility through the recapture of margins that are available as a result of the transition to Framatome, Inc. NRC-approved SLMCPR calculation methodology.
Docket Nos	50–237, 50–249, 50–254, 50–265.
Exelon Generation Company, LLC; Peach Bottom Atomic Power Station, Units 2 and 3; York County, PA	
Date Issued	12/17/2019.
ADAMS Accession No	ML19289B931.
Amendment Nos	329 (Unit 2) and 332 (Unit 3).
Brief Description of Amendments	The amendments revised actions for an inoperable battery, battery charger, and alternate battery charger testing criteria. A longer completion time for an inoperable battery charger will allow additional time for maintenance and testing. The changes in the technical specification requirements are consistent with NRC-approved Technical Specifications Task Force (TSTF) Traveler TSTF–500, Revision 2, ''DC [Direct Current] Electrical Rewrite—Update To TSTF–360''.

TABLE 2—LICENSE AMENDMENT ISSUANCE(S)—Continued

Docket Nos	50–277, 50–278.
NextEra Energy Seabrook, LLC; Seabrook Station, Unit No. 1; Rockingham County, NH	
Date Issued	December 5, 2019.
ADAMS Accession No	ML19326C480.
Amendment Nos	163.
Brief Description of Amendments	The amendment revised the technical specifications to allow for a one-time extension to the allowed outage time for Limiting Condition for Operation 3.8.3.1, ''Onsite Power Distribution—Operating,'' to restore an inoperable alternating current vital panel from 24 hours to 7 days on the vital inverter. The NRC staff's safety evaluation contains the Commission's final determination of no significant hazards consideration.
Docket Nos	50–443.
Southern Nuclear Operating Company, Inc.; Edwin I Hatch Nuclear Plant, Units 1 and 2; Appling County, GA	
Date Issued	December 3, 2019.
ADAMS Accession No	ML19312A098.
Amendment Nos	302 (Unit 1) and 247 (Unit 2).
Brief Description of Amendments	The amendments revised Unit 1 and Unit 2 Technical Specification (TS) 3.3.8.1, ''Loss of Power (LOP) Instrumentation,'' to modify the instrument allowable values for Unit 1, 4.16 kilovolt (kV) emergency bus degraded voltage instrumentation and delete the annunciation requirements for the Unit 1, 4.16 kV emergency bus undervoltage instrumentation, including associated TS actions. The amendments also deleted Unit 1, License Condition 2.C(11), and Unit 2, License Condition 2.C(3)(i). Additionally, the amendments revised Surveillance Requirement (SR) 3.8.1.8 in TS 3.8.1, ''AC Sources—Operating,'' to increase the voltage limit in the emergency diesel generator full load rejection test for the Unit 1 emergency diesel generators.
Docket Nos	50–321, 50–366.
Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Units 3 and 4; Burke County, GA	
Date Issued	November 15, 2019.
ADAMS Accession No	ML19282D340.
Amendment Nos	166 (Unit 3) and 164 (Unit 4).
Brief Description of Amendments	The amendments consisted of changes to the Updated Final Safety Analysis Report (UFSAR) and the Combined License Appendix A, Technical Specifications, definition for Channel Calibration to allow a qualitative check (i.e., sensor resistance and insulation resistance tests) as an acceptable means to perform channel calibration for the reactor coolant pump speed sensors. An additional change is to the UFSAR to allow the use of a conservatively allocated response time in lieu of measurement for the reactor coolant pump speed sensors and preamplifiers.
Docket Nos	52–025, 52–026.
Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Units 3 and 4; Burke County, GA	
Date Issued	December 10, 2019.
ADAMS Accession No	ML19322C105.
Amendment Nos	169 (Unit 3) and 167 (Unit 4).
Brief Description of Amendments	The amendments authorized changes to the Vogtle Electric Generating Plant (Vogtle) Units 3 and 4 Updated Final Safety Analysis Report in the form of departures from the incorporated plant-specific Design Control Document Tier 2* and Tier 2 information and involved changes to License Conditions 2.D.(4)(b) and 2.D.(5)(b) of Combined License (COL) Nos. NPF–91 and NPF–92. The license amendments credit previously completed first plant only startup testing performed in China on the new AP1000 power reactor at Sanmen Nuclear Power Station Unit 1 as applicable to Vogtle, Units 3 and 4. Specifically, the changes revised the COLs to delete conditions requiring the following tests: Natural circulation (steam generator) test, rod cluster control assembly out of bank measurements, load follow demonstration, and the passive residual heat removal heat exchanger test.
Docket Nos	52–025, 50–026.
STP Nuclear Operating Company; South Texas Project, Units 1 and 2; Matagorda County, TX	
Date Issued	December 9, 2019.
ADAMS Accession No	ML19322A719.
Amendment Nos	218 (Unit 1) and 204 (Unit 2).
Brief Description of Amendments	The amendments revised technical specifications in Section 3.0 and Section 4.0 regarding limiting condition for operation and surveillance requirement usage. The changes are consistent with NRC-approved Technical Specifications Task Force (TSTF) Traveler TSTF–529, ''Clarify Use and Application Rules'' (ADAMS Accession No. ML16062A271).
Docket Nos	50–498, 50–499.
Tennessee Valley Authority; Watts Bar Nuclear Plant, Units 1 and 2; Rhea County, TN	
Date Issued	December 10, 2019.
ADAMS Accession No	ML19336C519.
Amendment Nos	131 (Unit 1) and 34 (Unit 2).

TABLE 2—LICENSE AMENDMENT ISSUANCE(S)—Continued

Brief Description of Amendments	The amendments revised Technical Specification Table 3.3.5–1, ''LOP DG Start Instrumentation,'' Function 5, ''6.9 kV Emergency Bus Undervoltage (Unbalanced Voltage),'' to correct the values for the allowable value (AV) for the unbalanced voltage relay (UVR) low trip voltage, the AV for the UVR high trip time delay, and the trip setpoint for the UVR high trip time delay.
Docket Nos	50–390, 50–391.
Tennessee Valley Authority; Watts Bar Nuclear Plant, Units 1 and 2; Rhea County, TN	
Date Issued	December 9, 2019.
ADAMS Accession No	ML19276E557.
Amendment Nos	130 (Unit 1) and 33 (Unit 2).
Brief Description of Amendments	The amendments revised the Technical Specification (TS) requirements related to direct current (DC) electrical systems to be consistent with Technical Specifications Task Force Traveler, TSTF–500, Revision 2, ''DC Electrical Rewrite—Update to TSTF–360.'' In addition, the amendments revised TS 3.8.4 to declare the associated diesel generator(s) inoperable when one or more diesel generator DC battery charger(s) in redundant trains is inoperable.
Docket Nos	50–390, 50–391.
Union Electric Company; Callaway Plant, Unit No. 1; Callaway County, MO	
Date Issued	December 6, 2019.
ADAMS Accession No	ML19283C481.
Amendment Nos	221.
Brief Description of Amendments	The amendment revised the technical specifications (TSs) to remove slave relay K620 from the scope of TS Surveillance Requirement (SR) 3.3.2.14 testing during shutdown conditions at 18-month intervals and incorporate it into the scope of SR 3.3.2.6 for surveillance testing during power operations at a frequency in accordance with the Surveillance Frequency Control Program.
Docket Nos	50–483.

Dated at Rockville, Maryland, this 20th day of December, 2019.

For the Nuclear Regulatory Commission.

Craig G. Erlanger,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2019–27947 Filed 12–30–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 30–35252–EA; ASLBP No. 20–964–02–EA–BD01]

In the Matter of Team Industrial Services, Inc.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission, *see* 37 FR 28710 (Dec. 29, 1972), and the Commission's regulations, *see, e.g.,* 10 CFR 2.104, 2.105, 2.300, 2.309, 2.313, 2.318, 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over the following proceeding:

TEAM INDUSTRIAL SERVICES, INC. (Order Imposing Civil Monetary Penalty)

This Board is being established pursuant to a hearing request submitted by Team Industrial Services, Inc. in response to an Order Imposing Civil Monetary Penalty, EA–18–124, dated September 20, 2019 and published in the **Federal Register**. *See* 84 FR 58178 (Oct 30, 2019).

The Board is comprised of the following Administrative Judges:

Paul S. Ryerson, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

William J. Froehlich, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

Dr. Gary S. Arnold, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001

All correspondence, documents, and other materials shall be filed in accordance with the NRC E-Filing rule. *See* 10 CFR 2.302.

Rockville, Maryland.

Dated: December 23, 2019.

Edward R. Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 2019–28221 Filed 12–30–19; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2020–80 and CP2020–79]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 30, 2019.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each

request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2020–80 and CP2020–79; *Filing Title:* USPS Request to Add Priority Mail Express & Priority Mail Contract 110 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* December 20, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Kenneth R. Moeller; *Comments Due:* December 31, 2019.

This Notice will be published in the **Federal Register**.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2019–28203 Filed 12–30–19; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87853; File No. SR–NYSECHX–2019–27]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Price List To Extend for One Year a Fee Discount for the Partial Cabinet Solution Bundles Offered in Connection With the Exchange's Co-Location Services and Update Obsolete Text

December 23, 2019.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 20, 2019 the NYSE Chicago, Inc. (''NYSE Chicago'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Fee Schedule of NYSE Chicago, Inc. (the ''Fee Schedule'') to extend for one year a fee discount for the Partial Cabinet Solution bundles offered in connection with the Exchange's co-location services and update obsolete text. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule related to co-location[4] services to extend a fee discount for the Partial Cabinet Solution (''PCS'') bundles that the Exchange offers Users.[5]

There are four PCS bundles, each of which includes a partial cabinet; access to the Liquidity Center Network (''LCN'') and internet protocol (''IP'') network, the local area networks available in the data center; two fiber cross connections; and connectivity to one of two time feeds.[6] The PCS bundles were designed to attract smaller Users, including those with minimal power or cabinet space demands or those for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome.[7]

The Exchange offers Users that purchase a PCS bundle on or before December 31, 2019 a 50% reduction in the monthly recurring charges (''MRC'') for the first 24 months.[8] The Exchange proposes to extend the 50% fee reduction to those Users that purchase a PCS bundle on or before December 31, 2020.[9] The Exchange does not propose to amend the length of the discount period.

In addition, the Exchange proposes to update obsolete text. At the time the Exchange added the PCS bundles to its Fee Schedule, the Affiliate SROs had

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (''Commission'') in October 2019. *See* Securities Exchange Act Release No. 87408 (October 28, 2019), 84 FR 58778 (November 1, 2019) (SR–NYSECHX–2019–27) (''Co-location Notice''). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, a ''User'' means any market participant that requests to receive co-location services directly from the Exchange. *See id.* at note 6. As specified in the Fee Schedule, a User that incurs co-location fees for a particular co-location service pursuant thereto would not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates the New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., and NYSE National, Inc. (collectively, the ''Affiliate SROs''). *See id.* at 58779.

[6] *See id.* at 58782.

[7] *See* Securities Exchange Act Release No. 77072 (February 5, 2016), 81 FR 7394 (February 11, 2016) (SR–NYSE–2015–53).

[8] *See* Co-location Notice, *supra* note 4, at 58783.

[9] Affiliate SROs previously extended the MRC reduction for one year. *See* Securities Exchange Act Release Nos. 82223 (December 6, 2017) 82 FR 58459 (December 12, 2017) (SR–NYSE–2017–62); and 79715 (December 30, 2016), 82 FR 1777 (January. 6, 2017) (SR–NYSE–2016–91).

filed to amend two of the PCS bundles by replacing the 10 Gb LCN connection with a LCN 10 Gb LX connection, but the changes had not yet become operative.[10] The Exchange included notes to the two Partial Cabinet Solution bundles in the Fee Schedule indicating the expected change.[11]

The change has since become operative, and the Exchange proposes to amend the Fee Schedule accordingly. More specifically, in the text describing the Option C and Option D PCS bundles, the Exchange proposes to

- replace ''*LCN connection (10 Gb),**'' *with* ''*LCN connection (10 GB LX),*'' *and*
- *delete the text stating* ''** The LCN connection (10 Gb) will be replaced with an LCN connection (10 Gb LX) on a date to be announced by customer notice, expected to be during the fourth quarter of 2019.*''

The amended portion of the Fee Schedule would read as follows:

Type of service	Description	Amount of charge
Partial Cabinet Solution bundles. *Note:* A User and its Affiliates are limited to one Partial Cabinet Solution bundle at a time. A User and its Affiliates must have an Aggregate Cabinet Footprint of 2 kW or less to qualify for a Partial Cabinet Solution bundle. See Note 2 under ''General Notes.''	Option A: 1 kW partial cabinet, 1 LCN connection (1 Gb), 1 IP network connection (1 Gb), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	$7,500 initial charge per bundle plus monthly charge per bundle as follows: • For Users that order on or before December 31, 2020: $3,000 monthly for first 24 months of service, and $6,000 monthly thereafter. • For Users that order after December 31, 2020: $6,000 monthly.
	Option B: 2 kW partial cabinet, 1 LCN connection (1 Gb), 1 IP network connection (1 Gb), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	$7,500 initial charge per bundle plus monthly charge per bundle as follows: • For Users that order on or before December 31, 2020: $3,500 monthly for first 24 months of service, and $7,000 monthly thereafter. • For Users that order after December 31, 2020: $7,000 monthly.
	Option C: 1 kW partial cabinet, 1 LCN connection (10 Gb LX), 1 IP network connection (10 Gb), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	$10,000 initial charge per bundle plus monthly charge per bundle as follows: • For Users that order on or before December 31, 2020: $7,000 monthly for first 24 months of service, and $14,000 monthly thereafter. • For Users that order after December 31, 2020: $14,000 monthly.
	Option D: 2 kW partial cabinet, 1 LCN connection (10 Gb LX), 1 IP network connection (10 Gb), 2 fiber cross connections and either the Network Time Protocol Feed or Precision Timing Protocol.	$10,000 initial charge per bundle plus monthly charge per bundle as follows: • For Users that order on or before December 31, 2020: $7,500 monthly for first 24 months of service, and $15,000 monthly thereafter. • For Users that order after December 31, 2020: $15,000 monthly.

Application and Impact of the Proposed Change

The proposed change would apply to all PCS bundles. The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally.

Users that require other sizes or combinations of cabinets, network connections and cross connects could still request them. As is currently the case, the purchase of any colocation service, including PCS bundles, is completely voluntary and the Fee Schedule is applied uniformly to all Users.

Competitive Environment

A User may host another entity in its space within the data center. Such Users are called ''Hosting Users,'' and their customers are ''Hosted Customers.''[12]

Based on conversations with Users and potential customers, the Exchange believes that Hosting Users offer bundles (''Hosting User Bundles'') that include cabinet space and space on shared LCN and IP network connections—and that the Hosting User Bundles provide their end users with a service similar to that of the PCS bundles, but with a lower cost and latency.[13]

The Exchange believes that, by extending the existing eligibility for a 50% MRC reduction for another year, the proposed change may make PCS bundles more competitive with the services that Hosting Users offer. Importantly, the proposed extension would provide potential Users with a wider range of choices for the period of the extension, which would be especially beneficial for potential Users with minimal power or cabinet space demands or those for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome.[14]

The Exchange operates in a highly competitive market in which exchanges and other vendors (*i.e.,* Hosting Users) offer co-location services as a means to

[10] *See* Securities Exchange Act Release Nos. 86550 (August 1, 2019), 84 FR 38696 (August 7, 2019) (SR–NYSE–2019–41); 86548 (August 1, 2019), 84 FR 38704 (August 7, 2019) (SR–NYSEAmer–2019–28); 86547 (August 1, 2019), 84 FR 38708 (August 7, 2019) (SR–NYSEArca–2019–54); and 86549 (August 1, 2019), 84 FR 38700 (August 7, 2019) (SR–NYSENat–2019–17).

[11] *See* Co-location Notice, *supra* note 4, at note 26.

[12] A Hosting User is required to be a User, but because only Users can be Hosting Users, a Hosted Customer is not able to provide hosting services to any other entities in the space in which it is hosted. The Exchange allows Users to act as Hosting Users for a monthly fee. *See* Co-location Notice, *supra* note 4, at 58782–58783.

[13] Because Hosting Users' services are not regulated, they may offer differentiated pricing and are not required to make their pricing public or disclose it to the Exchange. The Exchange therefore does not have direct visibility into the specific range of options, or cost thereof, offered by Hosting Users, and relies on third parties for information.

[14] *See supra* note 7.

facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [15]

General

As is the case with all Exchange co-location arrangements, (i) neither a User nor any of the User's customers would be permitted to submit orders directly to the Exchange unless such User or customer is a member organization, a Sponsored Participant or an agent thereof (*e.g.,* a service bureau providing order entry services); (ii) use of the co-location services proposed herein would be completely voluntary and available to all Users on a non-discriminatory basis; [16] and (iii) a User would only incur one charge for the particular co-location service described herein, regardless of whether the User connects only to the Exchange or to the Exchange and one or more of the Affiliate SROs.[17]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[18] in general, and furthers the objectives of Section 6(b)(5) of the Act,[19] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and does not unfairly discriminate between customers, issuers, brokers, or dealers. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[20] because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes its proposal is not unfairly discriminatory.

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. The Exchange would continue to offer the four different PCS bundles with different cabinet footprints and network connections options. Users that require other sizes or combinations of cabinets, network connections and cross connects could still request them. As is currently the case, the purchase of any colocation service, including PCS bundles, would be completely voluntary.

The proposed change would ensure that all Users that order a bundle on or before December 31, 2020 would have their MRC reduced by 50% for the first 24 months. Extending the period would make it more cost effective for current or potential Users to utilize co-location by offering a cost effective, convenient way to create a colocation environment, through the choice among PCS bundles with different cabinet footprints and network connections options. The Exchange expects that such Users would include those with minimal power or cabinet space demands and Users for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome.

The Proposed Change Is Reasonable

The Exchange believes its proposal is reasonable.

The Exchange believes that it is reasonable to extend the period of eligibility for a 50% MRC reduction as an incentive to Users to utilize PCS bundles. Extending the existing eligibility for a 50% MRC reduction for another year would provide smaller current or potential Users with minimal power or cabinet space demands with additional time to purchase a PCS bundle at a discounted rate.

The Exchange believes that, by extending the existing eligibility for a 50% MRC reduction for another year, the proposed change may make PCS bundles more competitive with the services that Hosting Users offer. The proposed extension would continue to provide potential Users with a wider range of choices for the period of the extension.

With respect to the proposed changes to update obsolete text, the Exchange believes that the proposed change is reasonable because the PCS bundles would remain the same as the ones to which Users already have access, but, by updating the description and eliminating obsolete text, the change would make the Fee Schedule description easier to read, understand and administer. The Exchange believes that the change would protect investors and the public interest because, by updating the description and eliminating obsolete text, the change would make the description more accessible and transparent, thereby providing market participants with clarity as to what PCS bundles were offered.

The Proposed Change Is an Equitable Allocation of Fees and Credits

The Exchange believes its proposal equitably allocates its fees among its market participants.

The proposed change would not apply differently to distinct types or sizes of market participants. Rather, it would apply to all Users equally. The Exchange would continue to offer the four different PCS bundles with different cabinet footprints and network connections options. Users that require other sizes or combinations of cabinets, network connections and cross connects could still request them. As is currently the case, the purchase of any colocation service, including PCS bundles, would be completely voluntary.

Having the change apply to all PCS bundles would ensure that all Users that order a bundle on or before December 31, 2020 would have their MRC reduced by 50% for the first 24 months. Extending the period would make it more cost effective for current or potential Users to utilize co-location by continuing to offer a cost effective, convenient way to create a colocation environment, through the choice among

[15] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[16] As is currently the case, Users that receive co-location services from the Exchange will not receive any means of access to the Exchange's trading and execution systems that is separate from, or superior to, that of other Users. In this regard, all orders sent to the Exchange enter the Exchange's trading and execution systems through the same order gateway, regardless of whether the sender is co-located in the data center or not. In addition, co-located Users do not receive any market data or data service product that is not available to all Users, although Users that receive co-location services normally would expect reduced latencies, as compared to Users that are not co-located, in sending orders to, and receiving market data from, the Exchange.

[17] *See* Co-location Notice, *supra* note 4, at 58790. Each of the Affiliate SROs has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2019–72, SR–NYSEAmer–2019–58, SR–NYSEArca–2019–97, and SR–NYSENAT–2019–32.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] 15 U.S.C. 78f(b)(4).

PCS bundles with different cabinet footprints and network connections options. The Exchange expects that such Users would include those with minimal power or cabinet space demands and Users for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome.

Without this proposed rule change, potential Users choosing between a PCS bundle and a Hosting User Bundle would have fewer attractive options. This would be a detriment for them, especially for potential Users with minimal power or cabinet space demands or those for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome.[21]

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the reasons above, the proposed changes do not unfairly discriminate between or among market participants that are otherwise capable of satisfying any applicable co-location fees, requirements, terms and conditions established from time to time by the Exchange.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule changes will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of Section 6(b)(8) of the Act.[22]

Intramarket Competition

The Exchange does not believe that the proposed change would place any burden on intramarket competition that is not necessary or appropriate. The proposed changes would enhance competition by extending the period of eligibility for a 50% MRC reduction to all Users that order a bundle on or before December 31, 2020. Such change would make it more cost effective for current or potential Users to utilize co-location by offering a cost effective, convenient way to create a colocation environment, through the choice among PCS bundles with different cabinet footprints and network connections options. The Exchange believes that, by extending the period of eligibility, the proposed change may make PCS bundles more attractive to potential Users who might otherwise opt to become Hosted Customers, and thus enhance the competitive environment for potential Users (who would then have more options from which to select).

Importantly, the proposed extension would provide potential Users with a wider range of choices for the period of the extension, which would be especially beneficial for potential Users with minimal power or cabinet space demands or those for which the costs attendant with having a dedicated cabinet or greater network connection bandwidth are too burdensome. At the same time, however, no potential User would be obligated to purchase a PCS bundle, and it would still have the options offered by Hosting Users.

PCS bundles allow Users to select their desired cabinet footprint and network connections at a reduced MRC for the first 24 months. Such Users may choose, in turn, to pass on such cost savings to their customers. In addition to the proposed services being completely voluntary, they are available to all Users on an equal basis (*i.e.* the same products and services are available to all Users, and the extension of the 50% reduction for the MRC for the PCS bundles, would apply to all Users).

With respect to the proposed edits to update obsolete text, the change would not have any impact on competition, because it is solely designed to update the description of the PCS bundles and eliminate obsolete text, without changing the service that Users are currently offered.

Intermarket Competition

The Exchange does not believe that the proposed fee would impose any burden on intermarket competition that is not necessary or appropriate. The proposed change is not meant to affect competition among national securities exchanges. Rather, the Exchange believes that the proposed change is a reasonable attempt to maintain a more level playing field between the Exchange and the Hosting Users, who compete for Hosted Customer business. Because Hosting Users' services are not regulated, they may offer differentiated pricing and are not required to make their pricing public. The Exchange believes that the proposed change may make PCS bundles more attractive to potential Users who might otherwise opt to become Hosted Customers.

The Exchange operates in a highly competitive market in which exchanges offer co-location services as a means to facilitate the trading and other market activities of those market participants who believe that co-location enhances the efficiency of their operations. Accordingly, fees charged for co-location services are constrained by the active competition for the order flow of, and other business from, such market participants. If a particular exchange charges excessive fees for co-location services, affected market participants will opt to terminate their co-location arrangements with that exchange, and adopt a possible range of alternative strategies, including placing their servers in a physically proximate location outside the exchange's data center (which could be a competing exchange), or pursuing strategies less dependent upon the lower exchange-to-participant latency associated with co-location. Accordingly, the exchange charging excessive fees would stand to lose not only co-location revenues but also the liquidity of the formerly co-located trading firms, which could have additional follow-on effects on the market share and revenue of the affected exchange. In such an environment, the Exchange must continually review, and consider adjusting, its services and related fees and credits to remain competitive with other exchanges.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [23]

For the reasons described above, the Exchange believes that the proposed rule changes reflect this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

[21] *See supra* note 7.

[22] 15 U.S.C. 78f(b)(8).

[23] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [24] of the Act and subparagraph (f)(2) of Rule 19b–4 [25] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [26] of the Act 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–NYSECHX–2019–27 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSECHX–2019–27. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSECHX–2019–27 and should be submitted on or before January 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–28212 Filed 12–30–19; 8:45 am]

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[24] 15 U.S.C. 78s(b)(3)(A).

[25] 17 CFR 240.19b–4(f)(2).

[26] 15 U.S.C. 78s(b)(2)(B).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87855; File No. SR–FINRA–2019–012]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Partial Amendment No. 2 and Order Granting Accelerated Approval of the Proposed Rule Change To Amend FINRA Rule 5110 (Corporate Financing Rule—Underwriting Terms and Arrangements) To Make Substantive, Organizational, and Terminology Changes, as Modified by Partial Amendment No. 1 and Partial Amendment No. 2

December 23, 2019.

I. Introduction

On April 11, 2019, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (the ''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend FINRA Rule 5110 (Corporate Financing Rule—Underwriting Terms and Arrangements) (''Rule'' or ''Rule 5110'') to make substantive, organizational, and terminology changes to the Rule.

The proposed rule change was published for comment in the **Federal Register** on May 1, 2019.[3] On June 12, 2019, the Commission extended to July 30, 2019, the time period in which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change.[4] The Commission received six comment letters on the proposal.[5] On July 11, 2019, FINRA responded to the comments and filed Partial Amendment No. 1 to the proposal.[6] On July 29, 2019, the Commission published Partial Amendment No. 1 for notice and comment and instituted proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act [7] to determine whether to approve or disapprove the proposed rule change, as modified by Partial Amendment No. 1.[8] The Commission received three comment letters in response to the Order Instituting Proceedings.[9] On October 28, 2019, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 85715 (April 25, 2019), 84 FR 18592 (May 1, 2019) (''Notice'').

[4] *See* Securities Exchange Act Release No. 86091 (June 12, 2019), 84 FR 28371 (June 18, 2019).

[5] *See* letter from Suzanne Rothwell, Managing Member, Rothwell Consulting LLC, to Secretary, Commission, dated May 14, 2019 (''Rothwell''); letter from Stuart J. Kaswell, Esq., to Vanessa Countryman, Acting Director, Commission, dated May 17, 2019 (''Kaswell Letter No. 1''); letter from Eversheds Sutherland (US) LLP, on behalf of the Committee of Annuity Insurers, to Brent J. Fields, Secretary, Commission, dated May 21, 2019 (''CAI''); letter from Aseel Rabie, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Vanessa Countryman, Acting Secretary, Commission, dated May 30, 2019 (''SIFMA Letter No. 1''); letter from Robert E. Buckholz, Chair, Federal Regulation of Securities Committee, ABA Business Law Section, American Bar Association, to Vanessa Countryman, Acting Secretary, Commission, dated May 30, 2019 (''ABA''); letter from Davis Polk & Wardwell LLP, to Vanessa Countryman, Acting Secretary, Commission, dated June 5, 2019 (''Davis Polk'').

[6] *See* letter from Jeanette Wingler, Associate General Counsel, FINRA, to Vanessa Countryman, Secretary, Commission, dated July 11, 2019 (''FINRA Response No. 1''). Partial Amendment No. 1 is available at *https://www.finra.org/industry/rule-filings/sr-finra-2019-012. See also* Order Instituting Proceedings, *infra* note 8.

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Securities Exchange Act Release No. 8650977391 (July 29, 2019), 84 FR 37921 (August 2, 2019) (''Order Instituting Proceedings'').

[9] *See* letter from Hardy Callcott and Joseph McLaughlin, to Vanessa Countryman, Secretary, Commission, dated August 14, 2019 (''Callcott''); letter from Stuart J. Kaswell, Law Office of Stuart

Commission extended the time period in which the Commission must approve or disapprove the proposed rule change, as amended by Partial Amendment No. 1.[10] On November 8, 2019, FINRA responded to the comments and filed Partial Amendment No. 2 to the proposal.[11] This order provides notice of filing of Partial Amendment No. 2 and approves the proposal, as modified by Partial Amendments No. 1 and No. 2, on an accelerated basis.

II. Description of the Proposed Rule Change

Below is a description of FINRA's proposal as modified by Partial Amendment No. 1, followed by a description of Partial Amendment No. 2.

A. Proposed Rule Change as Modified by Partial Amendment No. 1 [12]

FINRA proposes to modify Rule 5110 in an effort to modernize, simplify, and streamline the Rule. Specifically, FINRA proposes changes to the following: (1) Filing requirements; (2) filing requirements for shelf offerings; (3) exemptions from filing and substantive requirements; (4) underwriting compensation; (5) venture capital exceptions; (6) treatment of non-convertible or non-exchangeable debt securities and derivatives; (7) lock-up restrictions; (8) prohibited terms and arrangements; and (9) defined terms. FINRA states that these changes should lessen the regulatory costs and burdens incurred when complying with the Rule.

Filing Requirements

FINRA proposes to allow members more time to make the required filings with FINRA from one business day after filing with the SEC or a state securities commission or similar state regulatory authority to three business days.[13]

FINRA also proposes to clarify and reduce filing requirements by directing members to provide SEC document identification number if available.[14] FINRA proposes to require filing: (1) Industry-standard master forms of agreement *only* if specifically requested to do so by FINRA;[15] (2) amendments to previously filed documents *only* if there have been changes relating to the disclosures that impact the underwriting terms and arrangements for the public offering in those documents;[16] (3) a representation as to whether any associated person or affiliate of a participating member is a beneficial owner of 5% or more of ''equity and equity-linked securities'';[17] and (4) an estimate of the maximum value for each item of underwriting compensation.[18]

Proposed Rule 5110(a)(4)(B)(iv) would not require filing a description of any securities acquired in accordance with Supplementary Material .01(b), which sets forth a non-exhaustive list of payments that generally would not be deemed to be underwriting compensation.[19]

FINRA also proposes to make a number of other clarifications regarding filing requirements to FINRA.[20] For example, the proposed rule change would clarify that a member participating in an offering is not required to file with FINRA if the filing has been made by another member participating in the offering.[21] In addition, rather than providing a non-exhaustive list of types of public offerings that are required to be filed, the proposed rule change would instead state that a public offering in which a member participates must be filed for review unless exempted by the Rule.[22] The proposed rule change, moreover, would clarify the general standard that no member may engage in the distribution or sale of securities unless FINRA has provided an opinion that it has no objection to the proposed underwriting terms and arrangements.[23] The proposed rule change also would clarify that any member acting as a managing underwriter or in a similar capacity must notify the other members participating in the public offering if informed of an opinion by FINRA that the underwriting terms and arrangements are unfair and unreasonable and the proposed terms and arrangements have not been appropriately modified.[24]

Further, FINRA proposes to adopt a new provision addressing terminated offerings, which provides that, when an offering is not completed according to the terms of an agreement entered into by the issuer and a member, but the member has received underwriting compensation, the member must give written notification to FINRA of all underwriting compensation received or to be received, including a copy of any agreement governing the arrangement.[25]

Filing Requirements for Shelf Offerings

FINRA proposes to codify exemptions from the filing requirements for certain shelf offerings that have historically been exempt from Rule 5110 and to streamline the filing requirements for the remaining shelf offerings.[26]

Public Offerings Exempt From Substantive and/or Filing Requirement

FINRA proposes to expand and clarify the scope of the exemptions under current Rule 5110. For example, FINRA proposes to exempt from Rule 5110's filing requirement a public offering by an ''experienced issuer.''[27] And although the proposed rule change would continue to apply Rule 5110's filing requirement to shelf offerings by issuers that do not meet the ''experienced issuer'' standard, such issuer would only need to file the following: (1) The Securities Act of 1933 (''Securities Act'') registration statement number; and (2) if specifically requested by FINRA, other documents and

J. Kaswell, LLC, to Jill M. Peterson, Assistant Secretary, Commission, dated August 16, 2019 (''Kaswell Letter No. 2''); and letter from Aseel Rabie, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Vanessa Countryman, Secretary, Commission, dated August 23, 2019 (''SIFMA Letter No. 2'').

[10] *See* Securities Exchange Act Release No. 87407 (October 28, 2019), 84 FR 58794 (November 1, 2019).

[11] *See* letter from Jeanette Wingler, Associate General Counsel, FINRA, to Vanessa Countryman, Secretary, Commission, dated November 8, 2019 (''FINRA Response No. 2''). Partial Amendment No. 2 is available at *https://www.finra.org/industry/rule-filings/sr-finra-2019-012. See also* Section II.B *infra.*

[12] For a more detailed description of the proposed rule change as modified by Partial Amendment No. 1, *see* Notice, *supra* note 3, and Order Instituting Proceedings, *supra* note 8. *See also* Partial Amendment No. 1 available at *https://www.finra.org/sites/default/files/2019-07/sr-finra-2019-012-amendment-no1.pdf.*

[13] *See* proposed Rule 5110(a)(3)(A).

[14] *See* proposed Rule 5110(a)(4)(A).

[15] *See* proposed Rule 5110(a)(4)(A)(ii).

[16] *See* proposed Rule 5110(a)(4)(A)(iii).

[17] *See* proposed Rule 5110(a)(4)(B)(iii) and proposed Rule 5110(j)(7).

[18] *See* proposed Rule 5110(a)(4)(B)(ii).

[19] *See* Order Instituting Proceedings, *supra* note 8, 84 FR at 37927–28, and Partial Amendment No. 1, *supra* note 6.

[20] *See* proposed Rule 5110(a)(3)(B), 5110(a)(2), 5110(a)(1)(C), and 5110(a)(1)(B). *See also* Notice, *supra* note 3, 84 FR at 18593.

[21] *See* proposed Rule 5110(a)(3)(B). Participating members are responsible for filing public offerings with FINRA. While an issuer may file an offering with FINRA if a participating member has not yet been engaged, a participating member must assume filing responsibilities once it has been engaged.

[22] *See* proposed Rule 5110(a)(2).

[23] *See* proposed Rule 5110(a)(1)(C).

[24] *See* proposed Rule 5110(a)(1)(B).

[25] *See* proposed Rule 5110(a)(4)(C) and proposed Rule 5110(g)(5).

[26] *See* Notice, *supra* note 3, 84 FR at 18593–594.

[27] The proposed rule change would delete references to the pre-1992 standards for Form S–3 and standards approved in 1991 for Form F–10 and instead codify the requirement that the issuer have a 36-month reporting history and at least $150 million aggregate market value of voting stock held by non-affiliates or alternatively the aggregate market value of voting stock held by non-affiliates is at least $100 million and the issuer has an annual trading volume of three million shares or more in the stock. *See* proposed Rule 5110(j)(6), 5110(h)(1)(C), and Notice, *supra* note 3, 84 FR at 18593–594.

information set forth in Rule 5110(a)(4)(A) and (B).[28]

Moreover, in proposed Rule 5110(h)(1)(A), FINRA proposes to clarify that securities of banks that have qualifying outstanding debt securities are exempt from the filing requirement.[29] Further, in the same provision, FINRA proposes to clarify that Treasury securities would not qualify for an exemption. Accordingly, FINRA proposes to make clear that the exemption applies to ''securities offered by a bank, corporate issuer, foreign government or foreign government agency that has *outstanding* unsecured non-convertible debt with a term of issue of at least four years or unsecured non-convertible preferred securities that are investment grade rated, as defined in Rule 5121(f)(8), or are *outstanding* securities in the same series that have equal rights and obligations as investment grade rated securities, provided that an initial public offering of equity is required to be filed'' (emphasis added).[30]

FINRA also proposes to expand the current list of offerings that are exempt from both the filing requirements and substantive provisions of Rule 5110. Specifically, FINRA proposes to include from such exemptions public offerings of closed-end ''tender offer'' funds (*i.e.,* closed-end funds that repurchase shares from shareholders pursuant to tender offers), insurance contracts, and unit investment trusts.[31] In addition, FINRA would also include in such exemptions tender offers by issuers for their own securities made pursuant to Rule 13e–4 under the Exchange Act.[32]

In addition, FINRA proposes to reclassify three items from the offerings exempt from filing and rule compliance to offerings excluded from the definition of public offering. These include: (1) Offerings exempt from registration with the SEC pursuant to Section 4(a)(1), (2) and (6) of the Securities Act; (2) offerings exempt from registration under specified Regulation D provisions; and (3) offerings of exempted securities as defined in Section 3(a)(12) of the Exchange Act.[33]

Disclosure Requirements

FINRA states that the proposed rule change would retain the current requirements for itemized disclosure of underwriting compensation and for disclosing dollar amounts ascribed to each such item.[34] Further, the proposal makes explicit the existing practice of disclosing specified material terms and arrangements related to underwriting compensation in the prospectus, and requires a description for: (1) Any right of first refusal (''ROFR'') granted to a participating member and its duration; and (2) the material terms and arrangements of securities acquired by the participating member (*e.g.,* exercise terms, demand rights, piggyback registration rights, and lock-up periods).[35]

Underwriting Compensation

FINRA proposes to define the term ''underwriting compensation'' in proposed Rule 5110 to mean ''any payment, right, interest, or benefit received or to be received by a participating member from any source for underwriting, allocation, distribution, advisory and other investment banking services in connection with a public offering. In addition, underwriting compensation shall include finder's fees, underwriter's counsel fees and securities.'' [36]

Further, FINRA provides that payments and benefits received during the applicable review period would be considered in evaluating underwriting compensation. According to FINRA, Rule 5110 currently provides that all items of value received or to be received from any source are presumed to be underwriting compensation when received during the period commencing 180 days before the required filing date of the registration statement or similar document, and up to 90 days following the effectiveness or commencement of sales of a public offering.

FINRA states that, to better reflect the different types of offerings subject to the Rule, the proposed rule change would introduce the defined term ''review period,'' and that the applicable time period would vary based on the type of offering. Accordingly, the proposed rule change would define the term ''review period'' to mean: (1) For a firm commitment offering, the 180-day period preceding the required filing date through the 60-day period following the effective date of the offering; (2) for a best efforts offering, the 180-day period preceding the required filing date through the 60-day period following the final closing of the offering; and (3) for a firm commitment or best efforts takedown or any other continuous offering made pursuant to Rule 415 of the Securities Act, the 180-day period preceding the required filing date of the takedown or continuous offering through the 60-day period following the final closing of the takedown or continuous offering.[37]

The proposed rule change would continue to provide two non-exhaustive lists of examples of payments or benefits that would and would not be considered underwriting compensation, with streamlining and clarifying modification.[38] According to FINRA, the proposed examples of payments or benefits that would be underwriting compensation are comparable to the list of items of value in the current Rule with some additional clarifying changes. For example, the proposed rule change would expand the current item of value related to reimbursement of expenses to provide that fees and expenses paid or reimbursed to, or paid on behalf of, the participating members, including but not limited to road show fees and expenses and due diligence expenses, would be underwriting compensation.[39] Consistent with current practice, the proposed rule change would also include in underwriting compensation non-cash compensation.[40]

According to FINRA, the proposed examples of payments or benefits that would not be underwriting compensation include several new examples to provide greater clarity and to address questions raised by members. For instance, the proposed rule change would clarify that the following would not be considered underwriting compensation: (1) Payments for records management and advisory services received by members in connection with some corporate reorganizations; [41] (2) payment or reimbursement of legal costs resulting from a contractual breach

[28] *See* proposed Rule 5110(a)(4)(E).

[29] *See* proposed Rule 5110(h)(1)(A).

[30] *See* Order Instituting Proceedings, *supra* note 8, 84 FR at 37926.

[31] *See* proposed Rule 5110(h)(2)(E), (K) and (L).

[32] *See* Order Instituting Proceedings, *supra* note 8, 84 FR at 37926, and Partial Amendment No. 1, *supra* note 6.

[33] *See* proposed Rule 5110(j)(18) and Order Instituting Proceedings, *supra* note 8, 84 FR at 37922.

[34] *See* proposed Rule 5110(b)(1) and Supplementary Material .05 to Rule 5110. *See also* proposed Rule 5110(e)(1)(B) requiring disclosure of lock-ups.

[35] *See* proposed Supplementary Material .05 to Rule 5110.

[36] *See* proposed Rule 5110(j)(22).

[37] *See* proposed Rule 5110(j)(20). FINRA states that, in accordance with this proposal, payments and benefits received during the applicable review period would be considered in evaluating underwriting compensation.

[38] *See* proposed Supplementary Material .01 to Rule 5110.

[39] *See* proposed Supplementary Material .01(a)(2) to Rule 5110. *See also* proposed Supplementary Material .01(a)(3) and (4) to Rule 5110 which includes fees and expenses of participating members' counsel and finder's fees paid or reimbursed to, or paid on behalf of, the participating members (except for reimbursement of ''blue sky'' fees) as underwriting compensation.

[40] *See* proposed Supplementary Material .01(a)(14) to Rule 5110.

[41] *See* proposed Supplementary Material .01(b)(3) to Rule 5110.

or misrepresentation by the issuer;[42] (3) securities acquired pursuant to a governmental or court approved proceeding or plan of reorganization as a result of action by the government or court (*e.g.,* bankruptcy or tax court proceeding);[43] (4) non-convertible securities purchased by the participating member in a public offering at the public offering price during the review period;[44] (5) accountable expenses received pursuant to Rule 5110(g)(5)(A);[45] and (6) compensation received through an employee benefit plan that qualifies under Section 401 of the Internal Revenue Code or a similar plan.[46]

In addition, the proposed rule change would take a principles-based approach in considering whether issuer securities acquired from third parties or in directed sales programs may be excluded from underwriting compensation. Such approach would start with the presumption that the issuer securities received during the review period would be underwriting compensation. FINRA, however, would consider the following factors, as well as any other relevant factors and circumstances, when considering whether securities of the issuer acquired from third parties may be excluded from underwriting compensation. Specifically, these include: (1) The nature of the relationship between the issuer and the third party, if any; (2) the nature of the transactions in which the securities were acquired, including, but not limited to, whether the transactions are engaged in as part of the participating member's ordinary course of business; and (3) any disparity between the price paid and the offering price or market price.

With respect to issuer securities acquired in directed sales programs, FINRA would consider the following factors, as well as any other relevant factors and circumstances, when considering whether an acquisition of securities by a participating member pursuant to an issuer's directed sales program may be excluded from underwriting compensation: (1) The existence of a pre-existing relationship between the issuer and the person acquiring the securities; (2) the nature of the relationship; and (3) whether the securities were acquired on the same terms and at the same price as other similarly-situated persons participating in the directed sales program.[47]

Venture Capital Exceptions

FINRA states that the proposed rule change would modify, clarify, and expand the venture capital exceptions.[48] Specifically, the proposed rule change would no longer treat as underwriting compensation securities acquisitions covered by two of the current exceptions: (1) Securities acquisitions and conversions to prevent dilution; and (2) securities purchases based on a prior investment history. This treatment is conditioned on prior investments in the issuer occurring before the review period.[49] When subsequent securities acquisitions take place (*e.g.,* as a result of a stock split, a right of preemption, a securities conversion, or when additional securities are acquired to prevent dilution of a long-standing interest in the issuer), the acquisition of the additional securities would not be treated as underwriting compensation under the proposed Rule.[50]

FINRA also proposes to broaden two of the current venture capital exceptions regarding purchases and loans by certain affiliates, and investments in and loans to certain issuers, by removing a limitation on acquiring more than 25% of the issuer's total equity securities.[51] Further, FINRA proposes to condition the availability of these exceptions to require that the affiliate, directly or through a subsidiary it controls, be in the business of making investments or loans or is an entity that has been newly formed by such affiliate.[52]

With respect to the current venture capital exception relating to private placements with institutional investors, the proposal would now clarify that the exception is available where the institutional investors participating in the offering are not affiliates of a FINRA member and purchase at least 51% of the total number of securities sold in the private placement at the same time and on the same terms.[53] In addition, the proposed rule change would raise the percentage that participating members in the aggregate may acquire from 20% to 40% of the securities sold in the private placement.[54] Further, the proposed rule change would expand the scope of the exception to include providing services for a private placement (rather than just acting as a placement agent).[55]

FINRA proposes to adopt a new venture capital exception where a highly regulated entity with significant disclosure requirements and independent directors who monitor investments is also making a significant co-investment in an issuer and is receiving securities at the same price and on the same terms as the participating member. The exception applies for securities acquired in a private placement before the required filing date of the public offering by a participating member if at least 15% of the total number of securities sold in the private placement were acquired, at the same time and on the same terms, by one or more entities that is an open-end investment company not traded on an exchange, and no such entity is an

[42] *See* proposed Supplementary Material .01(b)(4) to Rule 5110.

[43] *See* proposed Supplementary Material .01(b)(22) to Rule 5110.

[44] Specifically, FINRA proposes in Partial Amendment No. 1 to amend proposed Supplementary Material .01(a)(7) to provide that underwriting compensation includes ''common or preferred stock, options, warrants, and other equity securities, including debt securities convertible to or exchangeable for equity securities, beneficially owned, as defined in Rule 5121 by the participating members the value of which is determined pursuant to this Rule, and acquired during the review period, as defined in this Rule, except that non-convertible securities purchased by a participating member in a public offering at the public offering price during the review period shall not be deemed underwriting compensation . . .'' *See* FINRA Response No. 1, *supra* note 6, at 19 n. 27.

[45] Specifically, Supplementary Material .01(a)(13) would be revised to provide that underwriting compensation would include ''any compensation paid to any participating member in connection with a prior proposed public offering that was not completed, if the member firm participates in the revised public offering, except that accountable expenses received pursuant to paragraph (g)(5)(A) shall not be deemed underwriting compensation.'' *See* Order Instituting Proceedings, *supra* note 8, 84 FR at 37926 n.61 and Partial Amendment No. 1, *supra* note 6.

[46] Specifically, Supplementary Material .01(b)(12) would exclude from underwriting compensation ''compensation received through any stock bonus, pension, employee benefit plan, or profit-sharing plan that qualifies under Section 401 of the Internal Revenue Code or a similar plan, including, but not limited to, an employee benefit plan as defined in Securities Act Rule 405 or a compensatory benefit plan or compensatory benefit contract exempt from registration pursuant to Securities Act Rule 701 . . .'' *See* Order Instituting Proceedings, *supra* note 8, 84 FR at 37927, and Partial Amendment No. 1, *supra* note 6.

[47] *See* proposed Supplementary Material .04 to Rule 5110.

[48] Rule 5110(d)(5) currently provides exceptions designed to distinguish securities acquired in bona fide venture capital transactions from those acquired as underwriting compensation (for brevity, referred to herein as the ''venture capital exceptions''). *See* Notice, *supra* note 3.

[49] *See* proposed Supplementary Material .01(b)(14) and (16–18).

[50] The proposed rule change would add these acquisitions to the list of examples of payments that are not underwriting compensation because they are based on a prior investment history and are subject to the terms of the original securities that were acquired before the review period. *See* proposed Supplementary Material .01(b)(14) and (16–18).

[51] *See* proposed Rule 5110(d)(1) and (2).

[52] *Id.*

[53] *See* Notice, *supra* note 3, 84 FR at 18596–597.

[54] *See* proposed Rule 5110(d)(3)(C).

[55] *See* proposed Rule 5110(d)(3).

affiliate of a FINRA member participating in the offering.[56]

The proposed rule change would also provide some additional flexibility in the availability of the venture capital exceptions for securities acquired where the public offering has been significantly delayed. The proposed rule change would take a principles-based approach in considering whether it is appropriate to treat as underwriting compensation securities acquired by a member after the required filing date in a transaction that, except for the timing, would otherwise meet the requirements of a venture capital exception.[57] FINRA would consider the factors in proposed Supplementary Material .02 in determining whether securities acquired in a transaction that occurs after the required filing date, but otherwise meets the requirements of a venture capital exception, may be excluded from underwriting compensation. Specifically, FINRA would consider the following factors, as well as any other relevant factors and circumstances: (1) The length of time between the date of filing of the registration statement or similar document and the date of the transaction in which securities were acquired; (2) the length of time between the date of the transaction in which the securities were acquired and the anticipated commencement of the public offering; and (3) the nature of the funding provided, including, but not limited to the issuer's need for funding before the public offering.[58]

Treatment of Non-Convertible or Non-Exchangeable Debt Securities and Derivatives

The proposed rule change would expressly provide that non-convertible or non-exchangeable debt securities and derivative instruments[59] acquired in a transaction *unrelated* to a public offering would *not* be underwriting compensation.[60] In contrast, for any non-convertible or non-exchangeable debt securities and derivative instruments acquired in a transaction *related* to the public offering, the proposed rule change would clarify that: (1) A description of those securities and derivative instruments must be filed with FINRA; and (2) this description must be accompanied by a representation that a registered principal or senior manager of the participating member has determined if the transaction was or will be entered into at a fair price.[61]

FINRA also proposes to clarify that non-convertible or non-exchangeable debt securities and derivative instruments acquired in a transaction related to the public offering at a fair price would be considered underwriting compensation but would have *no* compensation value. In contrast, the proposed rule change would provide that non-convertible or non-exchangeable debt securities and derivative instruments acquired in a transaction related to the public offering but not at a fair price would be considered underwriting compensation and subject to the *normal* valuation requirements of Rule 5110.[62]

Lock-Up Restrictions

FINRA states that, subject to some exceptions, Rule 5110 requires in any public equity offering a 180-day lock-up restriction on securities that are considered underwriting compensation. The proposed rule change would provide that the lock-up period begins on the date of commencement of sales of the public equity offering (rather than the date of effectiveness of the prospectus).[63] The proposed rule change also would provide that the lock-up restriction must be disclosed in the section on distribution arrangements in the prospectus or similar document, consistent with proposed Supplementary Material .05 requiring disclosure of the material terms and arrangements of any acquisition of securities by a participating member.[64]

FINRA proposes to add an exception from the lock-up restriction for securities acquired from an issuer that meets the registration requirements of SEC Registration Forms S–3, F–3 or F–10.[65] Further, the proposed rule change would also add an exception from the lock-up restriction for securities that were acquired in a transaction meeting one of Rule 5110's venture capital exceptions.[66] FINRA provides that, while these securities would not be considered underwriting compensation and, thus, not subject to the lock-up restriction, the exception would provide additional clarity with respect to these securities. Moreover, the proposed rule change would add an exception from the lock-up restriction for securities that were received as underwriting compensation and are registered and sold as part of a firm commitment offering.[67]

FINRA proposes to provide clarity about the treatment of non-convertible or non-exchangeable debt securities and derivative instruments acquired in transactions related to a public offering and whether those securities are subject to the lock-up requirement.[68] Specifically, FINRA proposes that the lock-up restriction would not apply to derivative instruments acquired in connection with a hedging transaction related to the public offering and at a fair price.[69] Moreover, the lock-up restriction would not apply ''to a security that is 'actively-traded' (as defined in Rule 101(c)(1) of SEC Regulation M).'' [70] In addition, the transfer or sale of a security back to the issuer in a transaction exempt from registration with the SEC would not be subject to the lockup restriction.[71] Further, current Rule 5110(g)(2)(A)(ii) would be modified to permit the transfer of any security to the member's registered persons or affiliates if all transferred securities remain subject to the restriction for the remainder of the lock-up period.[72]

Finally, because proposed Supplementary Material .01(b)(20)

[56] *See* proposed Rule 5110(d)(4).

[57] *See* Notice, *supra* note 3, 84 FR at 18597.

[58] *See* proposed Supplementary Material .02(a)–(c) to Rule 5110.

[59] Consistent with the current Rule, the proposed rule change would define the term ''derivative instrument'' to mean any eligible OTC derivative instrument as defined in Rule 3b–13(a)(1), (2) and (3) of the Exchange Act. *See* proposed Supplementary Material .06(b) to Rule 5110.

[60] *See* proposed Supplementary Material .01(b)(19) to Rule 5110.

[61] *See* proposed Rule 5110(a)(4)(B)(iv)(a). FINRA states that, generally consistent with current Rule 5110, the proposed rule change would define the term ''fair price'' to mean the participating members have priced a derivative instrument or non-convertible or non-exchangeable debt security in good faith; on an arm's length, commercially reasonable basis; and in accordance with pricing methods and models and procedures used in the ordinary course of their business for pricing similar transactions. The proposed rule change would also clarify that a derivative instrument or other security received as compensation for providing services for the issuer, for providing or arranging a loan, credit facility, merger, acquisition or any other service, including underwriting services will not be deemed to be entered into or acquired at a fair price. *See* proposed Supplementary Material .06(b) to Rule 5110.

[62] *See, e.g.,* proposed Supplementary Material .06(a) to Rule 5110, proposed Rule 5110(c), and Notice, *supra* note 3.

[63] *See* proposed Rule 5110(e)(1)(A).

[64] *See* proposed Rule 5110(e)(1)(B).

[65] *See* proposed Rule 5110(e)(2)(A)(iii).

[66] *See* proposed Rule 5110(e)(2)(A)(vi).

[67] *See* proposed Rule 5110(e)(2)(A)(viii).

[68] *See* proposed Rule 5110(e)(2)(A)(iv).

[69] *See* proposed Rule 5110(e)(2)(A)(v). Derivative instruments acquired in transactions related to the public offering that do not meet the requirements of the exception would continue to be subject to the lock-up restriction. *See* Notice, *supra* note 3.

[70] *See* proposed Rule 5110(e)(2)(A)(ix). *See also* Order Instituting Proceedings, *supra* note 8, 84 FR at 37925, and Partial Amendment No. 1, *supra* note 6.

[71] *See* proposed Rule 5110(e)(2)(B)(iii).

[72] *See* proposed Rule 5110(e)(2)(B)(i). The proposed rule change would retain the current exception to the lock up for the exercise or conversion of any security, if all such securities received remain subject to the lock-up restriction for the remainder of the 180-day lock-up period. *See* proposed Rule 5110(e)(2)(B)(ii).

would provide that securities acquired subsequent to the issuer's IPO in a transaction exempt from registration under Rule 144A of the Securities Act would not be underwriting compensation, FINRA states that the proposed rule change would correspondingly delete as unnecessary the current exception from the lock-up restriction for those securities.[73]

Prohibited Terms and Arrangements

FINRA proposes to clarify and amend the list of prohibited unreasonable terms and arrangements in connection with a public offering of securities.[74] For example, the proposed rule change would clarify the scope of relevant activities that would be deemed related to the public offering [75] and refer to the commencement of sales of the public offering (rather than the date of effectiveness) in relation to the receipt of underwriting compensation consisting of any option, warrant or convertible security with specified terms.[76] The proposal would also clarify that it would be considered a prohibited arrangement for any underwriting compensation to be paid prior to the commencement of sales of public offering, except: (1) An advance against accountable expenses actually anticipated to be incurred, which must be reimbursed to the issuer to the extent not actually incurred; or (2) advisory or consulting fees for services provided in connection with the offering that subsequently is completed according to the terms of an agreement entered into by an issuer and a participating member.[77] Finally, the proposed rule change would also simplify a provision that relates to payments made by an issuer to waive or terminate a ROFR to participate in a future capital-raising transaction.[78] The proposed rule change would, however, retain the prohibition on any non-cash payment or fee to waive or terminate a ROFR.[79]

Defined Terms

The proposal would consolidate the defined terms in one location at the end of the Rule, which FINRA believes will simplify and clarify Rule 5110's defined terms. For example, FINRA proposes to consolidate the various provisions that address what constitutes underwriting compensation into a single, new definition of ''underwriting compensation.'' [80] The proposed rule change also would eliminate the term ''underwriter and related persons'' and instead use the defined term ''participating member.'' [81] Further, the proposed rule change would move the definition of ''public offering'' from Rule 5121 to Rule 5110 [82] and would modify the definition to add ''made in whole or in part in the United States'' to clarify the jurisdictional scope of the definition.[83] The proposed rule change would also move, without modification, the definition of ''Net Offering Proceeds'' from Rule 5110 to Rule 5121.[84]

In addition, the proposed rule change would modernize Rule 5110's language (*e.g.,* by replacing references to specific securities exchanges to instead reference the definition of ''national securities exchange'' in the Exchange Act). Furthermore, according to FINRA, the proposed rule change would include new defined terms to provide greater predictability for members in applying the Rule (*e.g.,* ''experienced issuer,'' [85] ''equity-linked securities,'' [86] ''overallotment option'' [87] and ''review period'' [88]).

The proposed rule change, moreover, would incorporate the definition of ''associated person'' [89] in Article I, Section (rr) of the FINRA By-Laws. Also, the proposed rule change would provide that a bank is ''a bank as defined in Section 3(a)(6) of the Exchange Act, a branch or agency in the United States of a foreign bank that is supervised and examined by a federal or state banking authority and otherwise meets the requirements of Section 3(a)(6) of the Exchange Act, or [is] a foreign bank that has been granted an exemption under this Rule and shall refer only to the regulated entity, not its subsidiaries or other affiliates.'' [90] In addition, the proposed rule change would revise the issuer definition to mean ''a registrant or other person that is offering its securities to the public, any selling security holder offering securities to the public, any affiliate of the registrant or such other person or selling security holder, and the officers or general partners, and directors thereof, but does not include a participating member unless the participating member is itself the registrant or a selling security holder offering its own beneficially held securities to the public.'' [91]

Valuation of Securities

The proposal would retain the current method for valuing options, warrants and other convertible securities received as underwriting compensation in the current Rule.[92]

[73] *See* current Rule 5110(g)(2)(A)(viii).

[74] *See* proposed Rule 5110(g).

[75] *See* proposed Rule 5110(g)(11). Specifically, to clarify the scope, the proposed rule change would refer to ''solicitation, marketing, distribution or sales of the offering'' rather than the current ''distribution or assisting in the distribution of the issue, or for the purpose of assisting in any way in connection with the underwriting.'' *See* Notice, *supra* note 3, 84 FR at 18599 n. 63.

[76] *See* proposed Rule 5110(g)(8).

[77] *See* proposed Rule 5110(g)(4).

[78] *See* current Rule 5110(f)(2)(F)(i).

[79] *See* proposed Rule 5110(g)(7).

[80] *See* proposed Rule 5110(j)(22). FINRA proposes to define the term ''underwriting compensation'' to mean ''any payment, right, interest, or benefit received or to be received by a participating member from any source for underwriting, allocation, distribution, advisory and other investment banking services in connection with a public offering. In addition, underwriting compensation shall include finder's fees, underwriter's counsel fees, and securities.'' *See id.*

[81] FINRA states that, substantively consistent with the current Rule, the proposed rule change would define ''participating member'' to include any FINRA member that is participating in a public offering, any affiliate or associated person of the member, and any ''immediate family,'' but does not include the issuer. *See* proposed Rule 5110(j)(15). While not included in the ''participating member'' definition, according to FINRA, the broad definition of underwriting compensation would include underwriter's counsel fees and expenses, financial consulting and advisory fees and finder's fees. As such, FINRA states its belief that the definition of ''underwriting compensation'' would ensure that the Rule addresses fees and expenses paid to persons previously covered by the term ''underwriter and related persons.'' In addition, according to FINRA, the term ''immediate family'' is clarified for readability in proposed Rule 5110(j)(8) to mean the spouse or child of an associated person of a member and any relative who lives with, has a business relationship with, or provides to or receives support from an associated person of a member. *See* Notice, *supra* note 3, for a full description of the proposal as originally filed.

[82] *See* proposed Rule 5110(j)(18). Rule 5121 would incorporate the definition in Rule 5110 by reference. *See* Rule 5121(f).

[83] *See* proposed Rule 5110(j)(18). FINRA is also proposing to amend the defined term ''public offering'' in proposed Rule 5110(j)(18)(A) to update the reference to offerings pursuant to ''Section 4(6)'' of the Securities Act to refer instead to Section 4(a)(5) of the Securities Act. *See* Order Instituting Proceedings, *supra* note 8, 84 FR at 37927.

[84] *See* proposed Rule 5121(f)(9).

[85] As discussed *supra,* the proposed rule change would delete references to the pre-1992 standards for Form S–3 and standards approved in 1991 for Form F–10 and instead codify the requirement that the issuer have a 36-month reporting history and at least $150 million aggregate market value of voting stock held by non-affiliates. (Alternatively, $100 million or more aggregate market value of voting stock held by non-affiliates and an annual trading volume of at least three million shares). Issuers meeting this standard would be defined as ''experienced issuers'' and their public offerings would be exempt from filing, but subject to the substantive provisions of Rule 5110. *See* proposed Rule 5110(j)(6).

[86] *See* proposed Rule 5110(j)(7).

[87] *See* proposed Rule 5110(j)(14).

[88] *See* proposed Rule 5110(j)(20).

[89] *See* proposed Rule 5110(j)(1).

[90] *See* proposed Rule 5110(j)(2).

[91] *See* proposed Rule 5110(j)(12).

[92] *See* proposed Rule 5110(c). *See also* Notice, *supra* note 3, 84 FR at 18600.

B. Partial Amendment No. 2 [93]

In response to comments received in response to the Order Instituting Proceedings, FINRA filed Partial Amendment No. 2 to the proposed rule change, as modified by Partial Amendment No. 1.[94] Partial Amendment No. 2 would modify the proposed rule change, as modified by Amendment No. 1, as follows:

Filing Requirements

In Partial Amendment No. 2, FINRA proposes to change the beneficial ownership threshold with respect to the representation requirement in proposed Rule 5110(a)(4)(B)(iii) from 5% to 10%. Specifically, as modified by Partial Amendment No. 2, proposed Rule 5110(a)(4)(B)(iii) would now require the filing of ''a representation as to whether any officer or director of the issuer and any beneficial owner of 10% or more of any class of the issuer's equity and equity-linked securities is an associated person or affiliate of a participating member''.

Venture Capital Exception

In Partial Amendment No. 2, FINRA proposes new Supplementary Material .07 to Rule 5110 to expressly provide its interpretation that the determination of whether a securities acquisition may qualify for a venture capital exception from underwriting compensation is to be made at the time of the securities acquisition.[95]

Investment Grade Debt Exemption

FINRA proposes to revise proposed Rule 5110(h)(1)(A) to add the term ''foreign bank'' to the list of entities that may rely on the investment grade exemption.

Definition of ''Participate''

FINRA proposes to revise proposed Rule 5110(j)(16)(B) to delete the words ''provided that another member or members is participating in the public offering.''

Underwriting Compensation

FINRA proposes to revise proposed Supplementary Material .01(a)(7) to provide that purchases of both convertible and non-convertible securities during the review period by a participating member in a public offering at the public offering price and on the same terms as all others that are not participating members not be underwriting compensation.[96]

Further, FINRA proposes to revise proposed Supplementary Material .01(b)(21) to provide that securities acquired by a member firm acting as a bona fide market maker would not constitute underwriting compensation.[97]

III. Discussion of Comments Received on the Proposed Rule Change and FINRA's Response

The Commission received a total of nine comments in response to the proposed rule change.[98] Six comment letters were received in response to the filing as originally proposed.[99] Subsequently, FINRA filed Partial Amendment No. 1 and a response to those comments.[100] The Commission thereafter received three comments in response to the Order Instituting Proceedings.[101] FINRA subsequently filed Partial Amendment No. 2 and a response to comments received in response to the Order Instituting Proceedings.[102] Significant comments received and FINRA's responses are summarized below.

Overall Proposal

Four commenters support FINRA's efforts to review, streamline, and modernize the Rule for the benefit of market participants but offer suggested modifications to some aspects of the proposal.[103] As discussed below, one commenter expresses support of a proposed exemption, but otherwise does not comment on other aspects of the proposal.[104] In response, FINRA has proposed certain modifications to the initial proposal as described in detail below.

Two commenters believe excessive underwriting compensation should be addressed through disclosure to investors and that Rule 5110 is inconsistent with the Exchange Act and the Securities Act.[105] These commenters suggest eliminating Rule 5110 in its entirety, or amending it to require only disclosure of underwriting compensation. In response, FINRA states, among other things, that while disclosure of underwriting compensation is an important component of Rule 5110, disclosure alone is not sufficient to prohibit unfair underwriting terms and arrangements that disadvantage issuers and investors in public offerings of securities.[106]

Filing Requirements

Three commenters state that several of the proposed filing requirements are unnecessary.[107] Namely, commenters argue that the following filing requirements should be eliminated or modified: (1) Disclosure of holdings that are excluded from underwriting compensation; [108] (2) M&A and private placement engagement letters; [109] (3) a representation as to whether any officer or director of the issuer and any beneficial owner of 5% or more of any class of the issuer's equity and equity-linked securities is an associated person or affiliate of a participating member; [110] (4) notification of underwriting compensation received in terminated or revised offerings; [111] and (5) a description of securities acquired in bona fide venture capital transactions.[112]

In response to commenters' concerns regarding disclosure of holdings that are excluded from underwriting compensation, FINRA proposes in Partial Amendment No. 1 to revise Rule 5110(a)(4)(B)(iv) to not require filing a

[93] The description in this Item II.B is based on Partial Amendment No. 2, as filed by FINRA. *See supra* note 11.

[94] *See id.*

[95] Specifically, as proposed in Partial Amendment No. 2, proposed new Supplementary Material .07 to Rule 5110 would state ''[t]he determination of whether a securities acquisition may be excluded from underwriting compensation pursuant to paragraph (d) is to be made at the time of the securities acquisition.'' *See* Partial Amendment No. 2, *supra* note 11.

[96] Specifically, Supplementary Material .01(a)(7) would now provide that ''common or preferred stock, options, warrants, and other equity securities, including debt securities convertible to or exchangeable for equity securities, beneficially owned, as defined in Rule 5121 by the participating members the value of which is determined pursuant to this Rule, and acquired during the review period, as defined in this Rule, except that any such securities purchased during the review period by a participating member in a public offering at the public offering price and on the same terms as all others purchasing in the public offering that are not participating members shall not be deemed underwriting compensation.''

[97] Specifically, Supplementary Material .01(a)(7) would now provide that underwriting compensation does not include ''securities acquired in the secondary market by a participating member that is a broker-dealer in connection with the performance of bona fide customer facilitation activities and bona fide market making activities . . .''

[98] *See supra* notes 5 and 9.

[99] *See supra* note 5.

[100] *See* FINRA Response No. 1, *supra* note 6.

[101] *See supra* note 9.

[102] *See supra* note 11.

[103] *See* ABA, Davis Polk, Rothwell, and SIFMA Letter No. 1, *supra* note 5.

[104] *See* CAI, *supra* note 5.

[105] *See* Kaswell Letter Nos. 1 and 2, and Callcott, *supra* notes 5, 9.

[106] *See* FINRA Response No. 1, *supra* note 6 at 2, and FINRA Response No. 2, *supra* note 11 at 5–6.

[107] *See* ABA, Davis Polk, and SIFMA Letter No. 1, *supra* note 5.

[108] *See* ABA, Davis Polk, and SIFMA Letter No. 1, *supra* note 5.

[109] *See* ABA, *supra* note 5. *See also* SIFMA Letter No. 2, *supra* note 9.

[110] *See* ABA and SIFMA Letter No. 1, *supra* note 5, and SIFMA Letter No. 2, *supra* note 9.

[111] *See* ABA, Davis Polk, and SIFMA Letter No. 1, *supra* note 5.

[112] *See* ABA, Davis Polk, and SIFMA Letter No. 1, *supra* note 5.

description of any securities acquired in accordance with Supplementary Material .01(b), which sets forth a non-exhaustive list of payments that generally would not be deemed to be underwriting compensation.[113]

With respect to M&A and private placement engagement letters, FINRA states that it continues to believe that such letters should be required to be filed with FINRA so that it may determine if they impact the underwriting terms and arrangements for the public offering.[114] Further, in response to one commenter's concern that FINRA's Public Offering System does not mirror the requirements of the proposed Rule and requires filing of stand-alone M&A and private placement engagement letters otherwise not required by the Rule,[115] FINRA responds by stating that proposed Rule 5110(a)(4)(A)(ii) requires filing an engagement letter with FINRA for review only when the engagement letter contains terms relevant to the underwriting terms and arrangements. FINRA states that engagement letters that do not contain terms relevant to the underwriting terms and arrangements would therefore not be required.[116] FINRA further states that, if the proposed rule change is approved, FINRA's Public Offering System would be revised and administered consistent with proposed Rule 5110(a)(4)(A)(ii).[117]

In response to comments with respect to the representation requirement in proposed Rule 5110(a)(4)(B)(iii),[118] FINRA proposes to increase the disclosure threshold of beneficial ownership from 5% to 10% or more of an entity's common or preferred equity.[119] Specifically, in Partial Amendment No. 2, FINRA proposes to revise proposed Rule 5110(a)(4)(B)(iii) to require filing ''a representation as to whether any officer or director of the issuer and any beneficial owner of 10% or more of any class of the issuer's equity and equity-linked securities is an associated person or affiliate of a participating member.'' FINRA states that this proposed amendment would provide greater flexibility to participating members in relation to beneficial ownership information while still requiring that participating members provide information needed to identify potential conflicts of interest.[120]

Further, with respect to compensation received relating to revised or terminated public offerings, FINRA states that such underwriting compensation is relevant for purposes of evaluating compliance with Rule 5110 and for preventing a member from being compensated twice for the same services.[121] In addition, as discussed in Partial Amendment No. 1, and in response to commenters' concerns, FINRA proposes to revise Supplementary Material .01(a)(13) to exclude from underwriting compensation accountable expenses received pursuant to Rule 5110(g)(5)(A).[122]

In response to comments regarding description of securities acquired in bona fide venture capital transactions, FINRA proposes to retain the requirement. FINRA believes that a description of the securities is needed for FINRA to assess whether the acquisition meets the requirements for a venture capital exception or whether the securities should instead be treated as underwriting compensation.[123]

Although most commenters suggest scaling back the filing requirements, one commenter suggests that FINRA withdraw a proposed exception from the filing requirement.[124] Specifically, the commenter proposes that the expansion of the ''seasoned issuer'' filing exemption to an issuer's public offerings where the issuer has ''securities in the same series that have equal rights and obligations as investment grade rated securities'' be removed.[125] Moreover, this and another commenter request additional clarification on the ''seasoned issuer'' exemption.[126] Specifically, one commenter seeks clarification regarding whether the issuer's qualifying debt or preferred securities for purposes of the exemption must be issued and outstanding.[127] The other commenter requests clarification that the term ''corporate issuer'' in the exemption is not meant to exclude issuers if they are not organized in ''corporate'' form.[128]

In response to commenters' concerns, FINRA clarifies that it does not intend the exemption to apply where the issuer has only outstanding, unrated non-convertible debt or preferred securities that the issuer deems to be in the same series as qualifying reacquired Treasury securities that were once rated investment grade. Accordingly, FINRA proposes to revise Rule 5110(h)(1)(A) to exempt ''securities offered by a bank, corporate issuer, foreign government or foreign government agency that has *outstanding* unsecured non-convertible debt with a term of issue of at least four years or unsecured non-convertible preferred securities that are investment grade rated, as defined in Rule 5121(f)(8), or are *outstanding* securities in the same series that have equal rights and obligations as investment grade rated securities, provided that an initial public offering of equity is required to be filed'' (emphasis added). In addition, FINRA states that it would interpret ''corporate issuers'' to include, among other entities, limited partnerships and limited liability companies.[129]

Disclosure

One commenter suggests adopting a *de minimis* exception for itemized disclosure under which participating members may disclose a maximum aggregate value for items of underwriting compensation that do not individually or in the aggregate exceed the lesser of: (1) $50,000; and (2) 0.1% of the dollar amount of securities offered in the public offering.[130] The same commenter also suggests that nominal gifts and occasional meals or other business entertainment that are provided in accordance with the limits set forth in proposed Rule 5110(f)(2)(A) and (B) should not be required to be separately itemized and disclosed as underwriting compensation because the administrative costs and burdens would outweigh the benefits.[131]

In response, FINRA notes that it previously considered the Rule's disclosure requirements and continues to believe that the current itemized

[113] *See* FINRA Response No. 1, *supra* note 6 at 3–4.

[114] *See* FINRA Response No. 1, *supra* note 6 at 3.

[115] *See* SIFMA Letter No. 2, *supra* note 9 at 3–5.

[116] *See* FINRA Response No. 2, *supra* note 11 at 2–3.

[117] *See id.*

[118] *See* FINRA Response No. 1, *supra* note 6 at 4–5. *See also* ABA, Davis Polk, and SIFMA Letter No. 1, *supra* note 5. ABA and SIFMA suggest a 25% threshold, while Davis Polk suggests a 10% threshold. *See* also SIFMA Letter No. 2, *supra* note 9.

[119] *See* FINRA Response No. 2, *supra* note 11 at 3.

[120] *See* FINRA Response No. 2, *supra* note 11 at 3.

[121] *See* FINRA Response No. 1, *supra* note 6 at 6.

[122] Specifically, Supplementary Material .01(a)(13) would provide that underwriting compensation would include ''any compensation paid to any participating member in connection with a prior proposed public offering that was not completed, if the member firm participates in the revised public offering, except that accountable expenses received pursuant to paragraph (g)(5)(A) shall not be deemed underwriting compensation.'' *See also* FINRA Response No. 1, *supra* note 6 at 6 n.10.

[123] *See* FINRA Response No. 1, *supra* note 6 at 4.

[124] *See* Rothwell, *supra* note 5.

[125] *See id.*

[126] *See* Rothwell and ABA, *supra* note 5.

[127] *See* Rothwell, *supra* note 5.

[128] *See* ABA, *supra* note 5.

[129] *See* FINRA Response No. 1, *supra* note 6 at 14.

[130] *See* SIFMA Letter No. 1, *supra* note 5, and SIFMA Letter No. 2, *supra* note 9.

[131] *See* SIFMA Letter No. 2, *supra* note 9.

approach to disclosure is appropriate.[132] FINRA further states that a *de minimis* exception would inherently involve a participating member categorizing different forms of underwriting compensation and determining whether the specific category exceeds the *de minimis* threshold.[133]

FINRA also declines to revise its Rule per commenter's suggestion regarding nominal gifts and occasional meals or other business entertainment. FINRA states that the suggested change would not alter the current requirements for disclosing non-cash compensation because non-cash compensation in connection with a public offering has long been considered underwriting compensation under Rule 5110 and is disclosed to FINRA via a question in FINRA's electronic filing system for public offerings.[134]

Valuation

Commenters request clarification, as well as offer suggestions, on FINRA's proposal to modify Rule 5110's calculations for valuing convertible and non-convertible securities.[135] Commenters request alternative valuation methodologies on a case-by-case basis [136] and for unit securities.[137] One commenter also requests, for purposes of clarification, express exclusion from valuation as underwriting compensation for options and other derivatives acquired at a fair price.[138]

In response, FINRA states that it proposes to retain the methods in the current Rule for valuing options, warrants, and other convertible securities received as underwriting compensation. FINRA states that exemptive relief may be available on a case-by-case basis pursuant to Rule 5110(i) for a member firm that seeks to use a single, consistently applied alternative valuation methodology.[139] FINRA also notes that it has previously provided guidance for valuing unit securities.[140] With respect to options and other derivatives acquired at a fair price, FINRA notes that the requested clarification is set forth in proposed Rule 5110(c)(5), which states ''[a]ny non-convertible or non-exchangeable debt or derivative instrument acquired or entered into at a 'fair price' as defined in Supplementary Material .06(b) and underwriting compensation received in or receivable in the settlement, exercise or other terms of such non-convertible or non-exchangeable debt or derivative instrument shall not have a compensation value for purposes of determining underwriting compensation.'' [141]

Venture Capital Exceptions

Commenters generally support the venture capital exceptions.[142] One commenter, however, contends that the definition of ''institutional investor'' [143] renders the venture capital exception unworkable.[144] The commenter suggests that the definition should focus instead on whether a participating member manages the investor's investments or otherwise controls or directs the investment decisions of the investor. Alternatively, the commenter suggests that the scope of those subject to the equity interest calculation be limited to the participating FINRA member firm and its affiliates (*i.e.,* the calculation should not include associated persons that are not otherwise ''affiliates'' of the member firm or immediate family of such associated persons). Further, the commenter suggests that the co-investment exception [145] be expanded to include other highly regulated entities that purchase in the private offering under the same conditions, provided that, in each case, no participating member manages the entity's investments or otherwise controls or directs the management or policies of the entity.[146] Finally, the commenter also suggests that the venture capital exceptions should be clarified to provide that a participating member could make the determination as to the availability of the exception at the time of the acquisition of the securities.[147]

In response, FINRA declines to revise the definition of ''institutional investor''. FINRA believes that revising the definition as suggested to focus on controlling or directing investment decisions would insert uncertainty and subjectivity into the definition and that the current definition is more objective.[148] Moreover, because Rule 5110's venture capital exceptions are relied upon by members, FINRA does not agree that the institutional investor definition makes the venture capital exceptions unworkable.

As for the comment regarding expanding the venture capital exception to other highly regulated entities, FINRA states that it will assess how the exception is operating in practice and may in the future consider extending the exception to include co-investments with other highly regulated entities on comparable terms.[149] In response to the request that the determination as to the availability of a venture capital exception be made at the time of the acquisition of the securities and based on the participating member's knowledge at that time, FINRA proposes new Supplementary Material .07 to Rule 5110, which would provide that ''[t]he determination of whether a securities acquisition may be excluded from underwriting compensation pursuant to paragraph (d) is to be made at the time of the securities acquisition.'' [150]

Lock-Up Restriction

One commenter suggests several changes to FINRA's proposed lock-up restriction, such as eliminating the restriction for offerings of securities that are ''actively-traded,'' making consistent the lock-up period for participating members in a follow-on offering as the lock-up period for insiders, and allowing the sale or other disposition of locked-up securities by registered

[132] *See* FINRA Response No. 1, *supra* note 6 at 7. *See also* FINRA Response No. 2, *supra* note 11 at 4–5.

[133] *See* FINRA Response No. 2, *supra* note 11 at 4–5.

[134] *See id.* at 5.

[135] *See* SIFMA Letter No. 1 and Rothwell, *supra* note 5.

[136] *See* SIFMA Letter No. 1, *supra* note 5 at 8.

[137] *See* Rothwell, *supra* note 5 at 12.

[138] *See* SIFMA Letter No. 1, *supra* note 5 at 8.

[139] *See* FINRA Response No. 1, *supra* note 6 at 8.

[140] *See id.*

[141] *See id.*

[142] *See* Rothwell and SIFMA Letter No. 1, *supra* note 5.

[143] Proposed Rule 5110(j)(10) defines the term ''institutional investor'' to mean ''any person that has an aggregate of at least $50 million invested in securities in its portfolio or under management, including investments held by its wholly owned subsidiaries; provided that no participating members manage the institutional investor's investments or have an equity interest in the institutional investor, either individually or in the aggregate, that exceeds 5% for a publicly owned entity or 1% for a nonpublic entity.

[144] *See* SIFMA Letter No. 1, *supra* note 5.

[145] According to FINRA, co-investment exception is a type of venture capital exception that applies to securities acquired in a private placement before the required filing date of the public offering by a participating member if at least 15% of the total number of securities sold in the private placement were acquired, at the same time and on the same terms, by one or more entities that is an open-end investment company not traded on an exchange, and no such entity is an affiliate of a FINRA member participating in the offering. *See* proposed Rule 5110(d)(4). *See also* Notice, *supra* note 3, 84 FR at 18612.

[146] *See* SIFMA Letter No. 1, *supra* note 5.

[147] *See id. See also* SIFMA Letter No. 2, *supra* note 9.

[148] *See* FINRA Response No. 1, *supra* note 6 at 9–10.

[149] *See* FINRA Response No. 1, *supra* note 6 at 9.

[150] *See* FINRA Response No. 2, *supra* note 11 at 6–7. FINRA points out that a securities acquisition must be made prior to the required filing date to qualify for the venture capital exceptions; accordingly, proposed Rule 5110(d)(1)–(4) would retain the language ''before the required filing date of the public offering'' in the rule text to continue to require that the securities acquisition be made prior to the required filing date to qualify for a venture capital exception. *See id.* at 7.

investment advisers who are participating members.[151]

In response, as discussed in Partial Amendment No. 1, FINRA proposes to add Rule 5110(e)(2)(A)(ix) to provide that the lock-up restriction will not apply ''to a security that is ''actively-traded'' (as defined in Rule 101(c)(1) of SEC Regulation M).'' [152] Due to conflicting views on the issue of follow-on offerings, however, FINRA states that it will retain the historical approach of a 180-day lock-up period for both initial and follow-on public offerings.[153] FINRA notes that certain follow-on public offerings may qualify for other exemptions.[154] FINRA also notes that, with respect to registered investment advisers who are participating members, it would consider requests for exemptive relief from the lock-up restriction pursuant to Rule 5110(i).[155]

Non-Cash Compensation

Two commenters request clarification that restrictions on non-cash compensation as set forth in the current Rule and proposed Rule 5110(f) are not intended to limit or otherwise be inconsistent with other provisions in the Rule that implicitly permit the receipt by participating members of non-cash compensation under appropriate circumstances.[156]

In response to the commenters' request for clarification, FINRA confirms the commenters' understanding regarding the restrictions on receipt of non-cash compensation.[157]

Prohibited Terms and Arrangements

One commenter, although generally supportive of the proposed changes relating to prohibited terms and arrangements in connection with a public offering of securities, offers two suggestions.[158] The commenter suggests that payments allowed prior to the commencement of sales of a public offering also be permitted in respect of offerings that are not completed, if the payments are for services actually provided and the issuer has not terminated the services of the participating member for cause.[159] The commenter further suggests that Rule 5110(g)(11), which provides that a FINRA member may not ''participate with an issuer in the public offering of securities if the issuer hires persons primarily for the purpose of solicitation, marketing, distribution or sales of the offering, except in compliance with Section 15(a) of the Exchange Act or [Exchange Act] Rule 3a4–1 and applicable state law,'' should be further modified to limit this prohibition to those instances in which the FINRA member knows, or reasonably should have known, that the issuer had hired persons absent compliance with applicable federal or state securities laws.[160]

In response, FINRA declines to modify the Rule pursuant to the commenter's suggestions.[161] FINRA believes that receiving advisory or consulting fees for services provided in connection with a public offering that is not completed and, therefore, results in no capital being raised is an unreasonable term and arrangement for purposes of Rule 5110. It notes, however, that participating members may receive termination fees or a ROFR related to an offering that is not completed consistent with Rule 5110(g)(5).

Further, FINRA believes that reasonable due diligence by a participating member would generally detect whether an issuer who has hired persons primarily for the purpose of solicitation, marketing, distribution, or sales of the offering was not in compliance with Section 15(a) of the Exchange Act or Rule 3a4–1 under the Exchange Act and applicable state law. According to FINRA, however, it would consider whether the participating member knew, or reasonably should have known, that the issuer had hired such persons absent compliance with applicable federal or state securities laws in assessing any violation of Rule 5110(g)(11).

Exemptions From Filing and Substantive Requirements

Commenters are generally supportive of FINRA's proposal to exempt certain offerings from the filing requirements.[162] One commenter, however, requests that FINRA expand the exemptions to include tender offers by issuers for their own securities under the Exchange Act.[163] In response to the comment, as discussed in Partial Amendment No. 1 and described above, FINRA proposes to amend Rule 5110(h)(2)(G) to include tender offers by issuers for their own securities.[164]

Defined Terms

One commenter suggests that the definition of ''bank'' under proposed Rule 5110(j)(2) should also include the US branches and agencies of a foreign bank.[165] In response, as discussed in the Partial Amendment No. 1 and described above, FINRA proposes to amend the proposed definition of bank in Rule 5110(j)(2) to include ''a branch or agency in the United States of a foreign bank that is supervised and examined by a federal or state banking authority and otherwise meets the requirements of Section 3(a)(6) of the Exchange Act.'' [166]

In response to the Order Instituting Proceedings, one commenter states that it agrees with the proposed modification to the definition of bank, but further suggests that proposed Rule 5110(h)(1)(A) also be amended to include ''foreign bank'' to avoid creating a new and burdensome requirement that foreign banks must apply to FINRA for an exemption before relying on the investment grade debt exemption from filing.[167] In response, FINRA proposes to revise Rule 5110(h)(1)(A) to add ''foreign bank'' to the list of entities that may rely on the exemption.[168]

Four commenters express concern over the term ''experienced issuer'' in Rule 5110(j)(6) and suggested alternatives or requested clarification.[169] For example, commenters express concern that the proposal would eliminate SEC and FINRA's past interpretive guidance relating to the term.[170] Further, one commenter specifically requests clarification regarding the extent to which member firms can rely on prior SEC and FINRA guidance and interpretation associated with the Form S–3 and F–10 eligibility requirements, including those related to determining aggregate market value and public float.[171] Yet another commenter suggests revising the definition of ''experienced issuer'' to ''explain the requirements that must be met to satisfy the 'reporting history' requirement.'' [172]

In response, FINRA states that it believes that the proposed definition of

[151] *See* SIFMA Letter No. 1, *supra* note 5 at 6.

[152] *See* FINRA Response No. 1, *supra* note 6 at 11.

[153] *See id.*

[154] *See id.*

[155] *See id.*

[156] *See* ABA, *supra* note 5 at 7, and SIFMA Letter No. 1, *supra* note 5 at 9.

[157] *See* FINRA Response No. 1, *supra* note 6 at 12.

[158] *See* ABA, *supra* note 5.

[159] *See* ABA, *supra* note 5 at 7–8.

[160] *See id.*

[161] *See* FINRA Response No. 1, *supra* note 6 at 12–13.

[162] *See* Rothwell, CAI, and ABA, *supra* note 5.

[163] *See* ABA, *supra* note 5 at 10.

[164] *See* FINRA Response No. 1, *supra* note 6 at 13–14.

[165] *See* ABA, *supra* note 5 at 10.

[166] *See* FINRA Response No. 1, *supra* note 6 at 15.

[167] *See* SIFMA Letter No. 2, *supra* note 9 at 2.

[168] *See* FINRA Response No. 2, *supra* note 11 at 7–8.

[169] *See* ABA, Davis Polk, SIFMA Letter No. 1, and Rothwell, *supra* note 5.

[170] *See id.*

[171] *See* SIFMA Letter No. 2, *supra* note 9 at 6–7.

[172] *See* Rothwell, *supra* note 5 at 14.

''experienced issuer'' codifies standards currently in place and simplifies the analysis for the benefit of members.[173] FINRA also notes that any guidance and interpretation issued by the SEC or FINRA relating to the term remain valid and illustrative,[174] including any guidance and interpretation on determining aggregate market value and public float issued by the SEC or FINRA at adoption of, or issued thereafter in connection with, the pre-1992 standards for Forms S–3 and F–3 and standards approved in 1991 for Form F–10.[175] Finally, FINRA states that ''reporting history is commonly understood to mean that the issuer has filed all material required to be filed for the relevant period immediately preceding the filing of the registration statement.'' [176]

One commenter requests to expand the defined term ''independent financial adviser'' in Rule 5110(j)(9) and revise proposed Rule 5110(j)(16) to allow an independent financial adviser to provide ordinary services to an issuer and assist the issuer in preparing offering and other documents.[177]

In response, FINRA disagrees with the suggested expansion of services that may be provided by the independent financial adviser.[178] According to FINRA, the commenter's suggestion would represent a significant expansion on the scope of services that may be provided by an independent financial adviser. Moreover, if adopted, compensation for these expanded services would not be underwriting compensation under the Rule. FINRA notes that it had previously concluded that that the advisory or consulting services that an independent financial adviser may provide minimizes the risk of the imposition of unfair or unreasonable terms and arrangements on issuers.

Four commenters seek clarification and/or suggest a variety of changes to the proposed definitions of ''participate,'' ''issuer,'' and ''participating member'' [179] Specifically, two commenters seek clarification on the extent of the ''issuer'' carve out from the definition of ''participating member.'' [180] One commenter suggests amending the proposed defined term ''participate'' to include additional detail on activities that are considered involvement in the distribution of an offering by adding ''including solicitation, marketing, distribution or sales of the offering.'' [181] Additionally, two commenters suggest excluding certain broker activities from the definition of ''participate,'' such as acting as a broker for a selling shareholder in return for compensation consisting of customary brokerage commissions and under circumstances in which the broker does not use special selling efforts and selling methods.[182] Finally, one commenter states that it does not believe that an independent financial adviser that is not engaged in the solicitation or distribution of the offering should be deemed to be ''participating'' in a public offering—and thereby subject to the Rule's filing and other requirements—solely because no other FINRA member is participating in the offering.[183]

In response, FINRA states that the addition of ''but does not include the issuer'' to the definition of participating member is ''intended to make clear that the 'issuer' as defined in proposed Rule 5110(j)(12) is entirely excluded from the proposed 'participating member' definition.'' [184] Moreover, in Partial Amendment No. 1 and as described above, FINRA proposes to amend the defined term ''issuer'' to exclude a participating member, except where the participating member is offering its securities.

With respect to the term ''participate,'' while FINRA concedes that adding ''including solicitation, marketing, distribution or sales of the offering'' is illustrative, FINRA proposes to retain the current approach in the definition to accommodate a broad range of activities that may constitute participating in an offering.[185] Moreover, FINRA states that it does not agree with the commenters' suggestion to create additional carve-outs from the definition of ''participate'' for certain brokerage activities, but notes that a participating members' compensation for some activities may not be deemed underwriting compensation.[186]

Finally, with respect to the suggested changes related to independent financial advisers, FINRA proposes to revise Rule 5110(j)(16)(B) to delete the words ''provided that another member or members is participating in the public offering.'' FINRA states that current Rule 5110 does not include this provision and that, accordingly, deleting the language will make the approach consistent with the current Rule.[187]

Two commenters suggest that the defined term ''public offering'' in proposed Rule 5110(j)(18) should expressly exclude securities offered or sold by a broker-dealer pursuant to Sections 4(a)(3) and 4(a)(4) of the Securities Act.[188] FINRA declines to make the suggested revision, stating that members have not previously filed these offerings with FINRA and, consequently, FINRA has not received information on these offerings.[189]

Four commenters assert that participating members' purchases of securities in a public offering at the public offering price should not be considered underwriting compensation subject to Rule 5110.[190]

In response, FINRA provides that it would interpret the proposal not to include as underwriting compensation non-convertible securities purchased by a participating member in a public offering at the public offering price during the review period. As discussed in the Partial Amendment No. 1, FINRA proposes to revise the Supplementary Material to expressly exclude securities purchased on these terms from being deemed underwriting compensation.[191]

Moreover, two commenters suggest that proposed Supplementary Material .04, which addresses securities acquired by a participating member's associated persons or their immediate family members in issuer directed sales programs, should be modified to focus only on securities acquired at a price lower than the public offering price.[192] One commenter is concerned that the proposed definition of ''review period'' expands the scope of the Rule and

[173] *See* FINRA Response No. 1, *supra* note 6 at 16.

[174] *See id.*

[175] FINRA further states that the proposed defined term is intended for simplification only, and incorporation of the standards into the proposed defined term would not alter the scope of public offerings subject to Rule 5110. *See* FINRA Response No. 2, *supra* note 11 at 8.

[176] *See* FINRA Response No. 1, *supra* note 6 at 15.

[177] *See* Rothwell, *supra* note 5 at 14–15.

[178] *See* FINRA Response No. 1, *supra* note 6 at 17.

[179] *See* Rothwell, ABA, SIFMA Letter No. 1, and Davis Polk, *supra* note 5.

[180] *See* Rothwell and SIFMA Letter No. 1, *supra* note 5.

[181] *See* Rothwell, *supra* note 5.

[182] *See* ABA and Davis Polk, *supra* note 5.

[183] *See* SIFMA Letter No. 2, *supra* note 9.

[184] *See* FINRA Response No. 1, *supra* note 6 at 18.

[185] *See* FINRA Response No. 1, *supra* note 6 at 17.

[186] *See id.*

[187] *See* FINRA Response No. 2, *supra* note 11 at 9.

[188] *See* ABA, *supra* note 5 at 11, and SIFMA Letter No. 2, *supra* note 9 at 8–9. ABA also suggests a technical change to update the reference in proposed Rule 5110(j)(18)(A) to offerings pursuant to Section 4(a)(6) of the Securities Act to Section 4(a)(5) of the Securities Act. As discussed in the Partial Amendment No. 1 and described above, FINRA proposes to revise the public offering definition's reference to these offerings as suggested by the commenter. *See supra* note 81.

[189] *See* FINRA Response No. 1, *supra* note 6 at 18.

[190] *See* ABA, Davis Polk, Rothwell, and SIFMA Letter No. 1, *supra* note 5.

[191] *See* FINRA Response No. 1, *supra* note 6 at 19 n.27.

[192] *See* ABA and SIFMA Letter No. 1, *supra* note 5.

suggests that FINRA withdraw Supplementary Material .04.[193]

In response to concerns regarding proposed Supplementary Material .04, FINRA states that proposed Supplementary Material .04 takes into account the price at which the securities are acquired. FINRA notes that, pursuant to proposed Supplementary Material .04, FINRA would consider, among other factors, whether the securities were acquired on the same terms and at the same price as other similarly-situated persons participating in the directed sales program.[194] Two commenters request clarification as to whether certain compensated parties would be considered ''participating members'' and thus their compensation be deemed underwriting compensation.[195] For example, one commenter requests confirmation that compensation received by a non-U.S. underwriter that is not itself a FINRA member or an affiliate of a participating FINRA member is not considered underwriting compensation.[196] Another commenter requests confirmation that fees and other compensation paid by an issuer to a foreign broker-dealer affiliated with a participating member in connection with a foreign distribution of an offering occurring in the U.S. and outside the U.S. simultaneously would not be deemed underwriting compensation under Rule 5110.[197]

In response, FINRA confirms that compensation received by a non-U.S. underwriter that is not itself a FINRA member or an affiliate of a participating FINRA member is not considered underwriting compensation.[198] Further, FINRA provides that, if the participating members are able to divide underwriting compensation so as to separately allocate the underwriting compensation received by the non-U.S. broker-dealer for the non-U.S. portion of the global offering, FINRA would consider such separately allocated underwriting compensation to be outside the scope of Rule 5110 and not subject to the requirements of Rule 5110.[199]

Finally, another commenter notes that the inclusion of ''finder's fees, underwriter's counsel fees, and securities'' in the proposed ''underwriting compensation'' definition in Rule 5110(j)(22) is confusing and unnecessary in light of the much clearer and more fulsome language contained in the Supplementary Material .01.[200]

In response, FINRA provides that the non-exhaustive examples in Supplementary Material .01 do not obviate the need for the defined term to capture the full scope of possible underwriting compensation.[201]

Underwriting Compensation

One commenter supports the changes in proposed Supplementary Material .01, which provides non-exhaustive lists of examples of payments or benefits that would or would not be underwriting compensation,[202] while others request that additional items be included to the list of items not deemed underwriting compensation.[203] Specifically, commenters suggest the following be deemed not to constitute underwriting compensation: (1) The 1% valuation assigned to ROFRs;[204] (2) nominal gifts and occasional entertainment;[205] (3) fees for services performed by participating members in the ordinary course of business unrelated to the distribution of the offering;[206] and (4) any cash compensation, securities or other benefit received by an associated person, immediate family, or affiliate of a participating member if the FINRA member or its parent or other affiliate is issuing its own securities in the public offering.[207]

In response, FINRA disagrees with these suggestions and believes that such compensations should be reported to FINRA as underwriting compensation.[208] With respect to 1% valuation assigned to ROFRs, FINRA maintains that ROFRs are a valuable benefit that traditionally have been used in combination with other forms of compensation to reward underwriters and that this historical approach to valuing ROFRs is reasonable. As for the suggestion pertaining to nominal gifts and occasional entertainment, FINRA responds that given the Rule's restrictions on the receipt of non-cash compensation, it expects such compensation to be nominal in practice, but that disclosure of non-cash compensation is needed for FINRA to have a complete understanding of underwriting compensation. Further, FINRA notes that the examples pertaining to payments or benefits received for services that may be considered unrelated to the public offering were added at the request of members for clarification and that the proposed scope of the examples is appropriate. Finally, with respect to compensation related to the issuance of one's own securities, FINRA states that, while rare, FINRA has seen potential violations of Rule 5110 in such offerings. Accordingly, FINRA declines to provide an exclusion of such instances from underwriting compensation.

In response to FINRA's proposal to expressly exclude non-convertible securities purchased by the participating member in a public offering at the public offering price during the review period from being deemed underwriting compensation, and to consider acquisitions of convertible securities by a participating member with negotiated or preferential terms under proposed Rule 5110(g)(8) as underwriting compensation,[209] one commenter suggests modifying Supplementary Material .01(a)(7) to provide that *any* securities purchased during the review period by a participating member in a public offering at the public offering price and without any preferential terms shall not be deemed underwriting compensation.[210]

In response, FINRA states that it is appropriate to interpret purchases of both convertible and non-convertible securities during the review period by a participating member in a public offering at the public offering price and on the same terms as all others that are not participating members not be

[193] *See* Rothwell, *supra* note 5 at 1.

[194] *See id.*

[195] *See* SIFMA Letter No. 1 and Davis Polk, *supra* note 5.

[196] *See* SIFMA Letter No. 1, *supra* note 5 at 7–8.

[197] *See* Davis Polk, *supra* note 5 at 4.

[198] *See* FINRA Response No. 1, *supra* note 6 at 19–20.

[199] *See* FINRA Response No. 1, *supra* note 6 at 20.

[200] *See* ABA, *supra* note 5 at 4–5.

[201] *See* FINRA Response No. 1, *supra* note 6 at 20.

[202] *See* Rothwell, *supra* note 5 at 2.

[203] *See* ABA, Davis Polk, and SIFMA Letter No. 1, *supra* note 5.

[204] *See* SIFMA and ABA, *supra* note 5.

[205] *See* ABA, *supra* note 5.

[206] *See* Davis Polk, *supra* note 5. One commenter also requests that FINRA delete the words ''to the issuer'' from Supplementary Material .01(b)(4)–(6), given the construct of items in proposed Supplementary Material .01(b) and the definition of underwriting compensation in proposed Rule 5110(j)(22) covering payments from ''any source.'' *See* ABA, *supra* note 5.

[207] *See* SIFMA Letter No. 1, *supra* note 5.

[208] *See* FINRA Response No. 1, *supra* note 6 at 20–23.

[209] In Partial Amendment No. 1, FINRA proposed to revise the Supplementary Material to expressly exclude non-convertible securities purchased by the participating member in a public offering at the public offering price during the review period from being deemed underwriting compensation under the proposal. In distinguishing between non-convertible and convertible securities, FINRA noted that it would consider acquisitions of convertible securities by a participating member with negotiated or preferential terms prohibited under proposed Rule 5110(g)(8) as underwriting compensation. *See* FINRA Response No. 2, *supra* note 11 at 10. *See also* Order Instituting Proceedings, *supra* note 8, 84 FR at 37927.

[210] *See* SIFMA Letter No. 2, *supra* note 9.

underwriting compensation.[211] FINRA thus proposes to adopt the suggestion in substantive part, stating that the proposed amendment would instead incorporate the concept of purchases at the same price and with the same terms to provide objectivity and clarity.[212] FINRA explains that the concept of preferential treatment suggested by the commenter would require weighing and considering all of the various terms of a securities acquisition, which could be time consuming and would introduce uncertainty into the evaluation.[213]

Three commenters suggest revising proposed Supplementary Material .01(b)(21) to expressly reference ''bona fide market making activity'' in the list of items not deemed as underwriting compensation under the proposed rule.[214] In response, as described above, FINRA proposes in Partial Amendment No. 2 to amend proposed Supplementary Material .01(b)(21) to expressly reference bona fide market making.[215]

Two commenters suggest revising Supplementary Material .01(b)(14) to exclude from underwriting compensation securities acquired as the result of an ''exercise'' of securities that were originally acquired prior to the review period.[216] In response, FINRA states that, pursuant to proposed Supplementary Material .01(b)(15), such securities would not be underwriting compensation.[217]

Two commenters suggest that the exception in proposed Supplementary Material .01(b)(12) be expanded to include additional employee benefit plans.[218] In response to commenters' suggestions,[219] and as discussed in the Partial Amendment No. 1 and described above, FINRA proposes to revise Supplementary Material .01(b)(12) accordingly.[220]

FINRA Rule 5121 (Public Offerings of Securities With Conflicts of Interest)

Two commenters request clarification regarding the required participation by a qualified independent underwriter (''QIU'').[221] In response, FINRA states that it has previously provided guidance regarding QIU participation pursuant to Rule 5121, and would be willing to consider requests for additional guidance on Rule 5121 separate from the proposal.[222]

IV. Discussion and Commission Findings

After careful review of the proposed rule change, the comment letters, and FINRA's response to the comments, the Commission finds that the rule change, as modified by Partial Amendments Nos. 1 and 2, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder that are applicable to a national securities association.[223] Specifically, the Commission finds that the rule change is consistent with Section 15A(b)(6) of the Exchange Act,[224] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

FINRA states that the proposal seeks to modify Rule 5110 in an effort to modernize the Rule by, among other things, improving the administration of the Rule and simplifying the Rule's provisions while maintaining important protections for market participants, including issuers and investors participating in offerings. FINRA also provides that it engaged in extensive consultation with the industry to understand what aspects of the Rule needed to be modernized, simplified, and clarified. In sum, FINRA believes that the changes it proposes should lessen the regulatory costs and burdens incurred when complying with the Rule.

The Commission has carefully considered the proposed rule change, as modified by Partial Amendments Nos. 1 and 2, comment letters, and FINRA's response to the comments, and believes that the Rule as amended is reasonably designed to provide just and equitable principles of trade, while providing for protection of investors and the public interest consistent with Section 15A(b)(6) of the Exchange Act.[225] Consequently, the Commission finds that the proposed rule change is designed to promote capital formation and aid member compliance efforts, while maintaining the integrity of the public offering process and investor confidence in the capital market.

The Commission notes that a total of nine comments were received, and FINRA made a number of clarifications and modifications to the original proposal to address commenters' comments. The Commission notes that commenters, in general, supported FINRA's effort to modernize and streamline the Rule and recognized that the proposal would ''make the Rule more efficient and provide members more certainty . . .''[226] The Commission also recognizes that two commenters challenge the consistency of the Rule with the Exchange Act and the Securities Act.[227] These commenters believe excessive underwriting compensation should be addressed through disclosure to investors and suggest eliminating Rule 5110 in its entirety or amending it to require only disclosure of underwriting compensation. Further, one commenter notes that FINRA does not identify or justify the amount of fees it collects under Rule 5110 and argues that ''[o]n this basis alone, it is unclear how FINRA's Rule 5110 fees comply with the 1934 Act requirements that fees be reasonable and not impose an undue burden on competition.''[228]

The Commission believes these comments are outside the scope of the proposed rule change. FINRA in the proposal seeks only to amend the Rule currently in place. Further, FINRA does not in this proposal seek to amend the fees related to the Rule.[229] Accordingly, the Commission does not believe these comments can be appropriately addressed through this proposal.

The Commission believes that FINRA gave due consideration to the proposal and met the requirements of the Exchange Act. The Commission also believes that the proposal modernizes and streamlines the Rule for the benefit of the members subject to, and the

[211] *See* FINRA Response No. 2, *supra* note 11 at 10. *See also* Order Instituting Proceedings, *supra* note 8, 84 FR at 37927.

[212] *See* FINRA Response No. 2, *supra* note 11 at 10.

[213] *See id.* at 10–11.

[214] *See* ABA and Davis Polk, *supra* note 5, and SIFMA Letter No. 2, *supra* note 9.

[215] *See* FINRA Response No. 2, *supra* note 11 at 12. Specifically, the provision would be revised to state that underwriting compensation does not include ''securities acquired in the secondary market by a participating member that is a broker-dealer in connection with the performance of bona fide customer facilitation activities and bona fide market making activities; provided that securities acquired from the issuer will be considered 'underwriting compensation' if the securities were not acquired at a fair price (taking into account, among other things customary commissions, mark-downs and other charges) . . .'' *See id.*

[216] *See* ABA and Davis Polk, *supra* note 5.

[217] *See* FINRA Response No. 1, *supra* note 6 at 21–22.

[218] *See* ABA and Davis Polk, *supra* note 5.

[219] *See id.*

[220] *See* FINRA Response No. 1, *supra* note 6 at 22. *See also supra* note 44.

[221] *See, e.g.,* SIFMA Letter No. 1, *supra* note 5 at 10, and ABA, *supra* note 5 at 8–9.

[222] *See* FINRA Response No. 1, *supra* note 6 at 23–24.

[223] In approving this rule change, the Commission has considered the rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[224] 15 U.S.C. 78o–3(b)(6).

[225] *Id.*

[226] *See* Davis Polk, *supra* note 5.

[227] *See* Kaswell Letter Nos. 1 and 2 and Callcott, *supra* notes 5, 9.

[228] *See* Callcott, *supra* note 9.

[229] *See also* FINRA's responses to these comments, *supra* notes 6 and 11.

investors affected by, the Rule. For the reasons stated above, the Commission finds that the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder.

V. Accelerated Approval of Proposed Rule Change, as Modified by Partial Amendments Nos. 1 and 2

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change, as modified by Partial Amendment Nos. 1 and 2 thereto, prior to the 30th day after publication of Partial Amendment No. 2 in the **Federal Register**. Partial Amendment No. 2 responds specifically to comments received in response to the Order Instituting Proceedings and makes corresponding amendments to the proposal. These revisions specifically respond to comments received, add clarity to the proposal, and do not raise any novel regulatory concerns. Accordingly, the Commission finds that good cause exists to approve the proposal, as modified by Partial Amendment Nos. 1 and 2 on an accelerated basis.

VI. Solicitation of Comments on Partial Amendment No. 2

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended by Partial Amendment Nos. 1 and 2, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2019–012 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2019–012. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2019–012 and should be submitted on or before January 21, 2020.

VII. Conclusion

It is therefore ordered pursuant to Exchange Act Section 19(b)(2) [53] that the proposal (SR–FINRA–2019–012), as modified by Partial Amendments Nos. 1 and 2, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[230]

Eduardo A. Aleman,

Deputy Secretary.

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[230] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87852; File No. SR–CBOE–2019–122]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To Allow the Exchange To Continue To List Classes of Options on the MSCI Emerging Markets Index After January 1, 2020

December 23, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 12, 2019, Cboe Exchange, Inc. (''Exchange'' or ''Cboe Options'') 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 and, for the reasons discussed below, is issuing this order approving the proposed rule change on an accelerated basis.

[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

Cboe Exchange, Inc. seeks approval from the Securities and Exchange Commission to continue listing classes of options on the MSCI EM Index.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to seek approval pursuant to Rule 4.10(i) for the continued listing of options on the EM Index (''EM Options''). Rule 4.10(i) establishes maintenance listing standards that apply to options on the EM Index [3] and also provides that in the event a class of index options listed on the Exchange fails to satisfy the maintenance listing standards, the Exchange shall not open for trading any additional series of options of that class unless the continued listing of that class of index options has been approved by the Commission under Section 19(b)(2) of the Exchange Act. Specifically, Rule 4.10(i)(2), requires that the total number of component securities in the EM Index

[3] As well as the MSCI EAFE, FTSE Emerging and FTSE Developed Europe indexes.

may not increase or decrease by more than 10% over the last six-month period (the ''component securities threshold''). Due to global market trends and the overall objectives of the EM Index, as described below, the Exchange has become aware that the EM Index will not meet this requirement for the next bi-annual index surveillance review of the EM Index components as-of January 1, 2020. Thus, the Exchange now seeks the Commission's approval for the continued listing of options on the EM Index, specifically, in connection with the component securities threshold, beginning January 1, 2020, as provided in Rule 4.10(i). The Commission's approval would allow the Exchange to continue to open for trading additional series of options on such index without interruption to the market and investor participation.

The EM Index is designed to capture large and mid-cap representation across emerging market countries. In particular, it is built to ''be flexible enough to adjust quickly to a constantly changing opportunity set'', that is, emerging markets.[4] It seeks ''to capitalize on the unique attributes of these vibrant economies'', which includes ''superior growth potential''.[5] Indeed, EM has experienced a continuous rise in the number of its component securities. When initially listed on the Exchange in 2015, the EM Index consisted of the following 23 emerging market country indexes: Brazil, Chile, China, Colombia, Czech Republic, Egypt, Greece, Hungary, India, Indonesia, Korea, Malaysia, Mexico, Peru, Philippines, Poland, Qatar, Russia, South Africa, Taiwan, Thailand, Turkey and United Arab Emirates. At that time, the EM Index had 834 constituents which covered approximately 85% of the free float-adjusted market capitalization in each country. Since its initial listing, Argentina,[6] Pakistan,[7] and Saudi Arabia[8] have joined the list of countries represented in the EM Index. Over recent years, the component securities of the EM Index have grown to a market capitalization of 5,582,502 (USD Millions) (up from 3,219,779 in 2016) and average market capitalization per constituent of 4,644 (USD Millions) (up from 3,847 in 2016). In addition to this, the components securities have an average daily volume of over 42 billion, and an average daily volume per constituent of over 35 million. Additionally, the largest constituent in the EM Index currently only accounts for 4.5% of the weight of the EM Index.[9]

Indeed, as a result of the growth of the emerging markets represented, the index has experienced continued expansion. As of July 1, 2019, the number of constituents in the EM Index had grown to a total of 1,194, and, as of October 31, 2019, a total of 1,202 constituents. In particular, the most notable expansion has been the recent (2018) introduction of Saudi Arabian securities (as indicated above) and mainland China component securities[10] into the EM Index. In early 2019, MSCI implemented a two-step inclusion plan for Saudi Arabian component securities and a three-step inclusion plan for mainland China component securities.[11] The plan ''phased-in'' increases in the weight and number of Saudi Arabian component securities, which was completed in August 2019,[12] and the weight and number of mainland China component securities, which was completed in November 2019.[13] The Exchange notes that the cumulative average growth rate of the EM Index component securities since 2015 has averaged 4.5% every six months. In the six-month window from January 2019 through July 2019 the EM Index experienced approximately a 6.2% increase in component securities; the majority of this increase was a direct result of MSCI's first inclusion phase of Saudi Arabian and mainland China component security. Though this was a departure from the 4.5% average every six months, the January 2019 through July 2019 increase was contained within the 10% threshold pursuant to Rule 4.10(i)(2). However, as a result of the second inclusion phase for Saudi Arabian and mainland China shares in August 2019, coupled with the third, and last, inclusion phase for mainland China shares in November 2019, the EM Index has surpassed a 10% increase from July 2019, and therefore, will be non-compliant with the component securities threshold for the Exchange's next bi-annual review of the component securities as-of January 1, 2020. Specifically, as a result of the August 2019 and November 2019 inclusions, the EM Index has experienced approximately a 17% increase from July 2019 (1,202 component securities at this time) to November 2019 (a total of 1,410 component securities after the November 2019 inclusion). The Exchange notes that this significant increase since July 2019 is an isolated departure from the 4.5% average six-month increases the EM Index has typically and steadily experienced since 2015. The Exchange further notes that the component securities threshold was the only threshold implicated as a result of MSCI's inclusion plan, and that the other threshold tests applicable to the EM Index under Rule 4.10(h) will be met as-of January 1, 2019 [sic]. As such, the Exchange respectfully requests that the Commission approve the continued listing of options on the EM Index in connection with the component securities threshold beginning January 1, 2020, as provided in Rule 4.10(i).

The Exchange believes that MSCI's recent inclusion plans are an exception to the normal course of the MSCI index reviews. The timing of the inclusion plans for the two, rapidly expanding markets arose around the same time, due to similar market overhauls separately undertaken by Saudi Arabia and China. In the recent years, Saudi Arabian markets have increased privatization and implemented several enhancements that further opened their markets to international institutional investors, while the Chinese government has eased previously strict access controls on the their markets.[14] As a result of these developments, MSCI conducted ''extensive global consultation with a large number of international institutional investors, including asset owners, asset managers, broker/dealers and other market

[4] *See* MSCI Emerging Markets Index brochure (dated May 2019) located at: *https://www.msci.com/documents/1296102/15035999/USLetter-MIS-EM-May2019-cbr-en.pdf/fb580e1e-d54c-4c68-1314-977bbff69bd7?t=1559125400402.*

[5] *Id.*

[6] Added in June 2018.

[7] Added in June 2017.

[8] Added in June 2018.

[9] *See* MSCI Emerging Markets Index fact sheet (dated October 31, 2019) located at: *https://www.msci.com/documents/10199/c0db0a48-01f2-4ba9-ad01-226fd5678111.*

[10] China ''A-Shares'', which trade on the Shanghai Stock Exchange and Shenzhen Stock Exchange.

[11] *See* MSCI Implementation Q&A: Inclusion of the MSCI Argentina, the MSCI Saudi Arabia Indexes and China A Shares in the MSCI Emerging Markets Indexes, at 17, 24 (May 2019) located at: *https://www.msci.com/documents/1296102/af029454-117c-f15c-8d5e-52aa627efa14.*

[12] *See* MSCI Emerging Markets Press Release, MSCI Equity Indexes August 2019 Index Review (August 7, 2019) located at: *https://www.msci.com/eqb/pressreleases/archive/MSCI_Aug19_QIRPR.pdf; and* MSCI Emerging Markets Press Release, MSCI Equity Indexes May 2019 Index Review (May 13, 2019) located at: *https://app2.msci.com/eqb/pressreleases/archive/MSCI_May19_QIRPR.pdf.*

[13] *See* MSCI Emerging Markets Press Release, MSCI Equity Indexes November 2019 Index review (November 7, 2019) located at: *https://www.msci.com/eqb/pressreleases/archive/MSCI_Nov19_QIRPR.pdf.*

[14] *See* MSCI Press Release, MSCI Will Increase the Weight of China A Shares in MSCI Indexes (February 28, 2019) located at: *https://www.msci.com/documents/10199/238444/China_A_Further_Weight_Increase_PR_Eng.pdf/43f3ee8b-5182-68d4-a758-2968b4206e54; see also* MSCI Press Release, Results of the MSCI 2018 Market Classification Review (June 20, 2018) located at: *https://www.msci.com/documents/10199/95fa3628-ff2e-e9cd-53b9-8912329ec40c* (discussing the decision to include Saudi Arabia).

participants worldwide,'' [15] in order to ultimately implement the inclusion plans. The Exchange also notes that, although MSCI announced the inclusion phase-in plan prior to its implementation, the number of component securities actually added (or removed as part of MSCI's regular quarterly reviews) in each phase was unknown until the August 2019 and November 2019 review releases.

The Exchange notes that the 10% threshold is designed to prevent significant adjustments to the number of EM Index constituents, particularly decreases that could: (i) Reduce component securities in the EM Index to a point that would raise manipulation concerns; or (ii) change the general character of the EM Index over which index options are issued. The 10% threshold is designed to allow for the more rapid, shorter-term changes (*e.g.,* an average 4.5% increase in constituents every six-months, and occasional increases from this, like the 6.2% increase from January 2019 through July 2019 as a result of the one inclusion phase) experienced by emerging markets that the EM Index is designed to capture. The current threshold is aligned with the way the EM Index has grown over the past four years and is expected to continue growing.[16]

As noted above, the 10% threshold is designed to prevent material increases that could change the character of the index over which broad-based index options are issued. The Exchange does not believe that the increase described herein changes the character of the EM Index. Unlike an index that is meant to represent a relatively fixed constituent count reflection of large-cap stocks, such as the S&P 500 Index, the EM Index contains mid-cap components and is designed to be flexible to change over time as the represented markets change. Given the increasingly high number of constituents and capitalization of the EM Index, the deep and liquid markets for the securities underlying the index, and the low percentage each constituent comprises of the total EM Index weight, and normally steady recent growth patterns, the concerns that a further increase, even such a significant 17% increase, in component securities would change the character of the index or allow for potential market manipulation and/or disruption in the underlying markets are greatly reduced. As stated above, the 17% increase is an outlying departure from the incremental increases the EM Index typically experiences.

The Exchange notes that significant decreases, as opposed to increases like those described herein, are more likely to raise concerns related to manipulation and/or disruption in the underlying markets, although the Exchange does not believe that a decrease in the number of constituents in any index, even by an amount greater than 10%, necessarily gives rise to manipulation concerns. Further, the Exchange currently maintains ''watch lists'' made up of countries and indexes with large constituent count changes which it reviews at least quarterly. The Exchange also conducts intermediate reviews on at least a quarterly basis to identify potential compliance concerns in connection with the continued listing standards in advance of its formal semi-annual index maintenance reviews. If the Exchange determines from its reviews that a change in the EM Index's composition would affect the protection of investors, it may cease listing series on the EM Index pursuant to Rule 4.4, notwithstanding Commission approval to continue listing options or if an index is still compliant with the component security threshold. The Exchange believes the frequency of these reviews will continue to successfully identify and address continued listing compliance concerns that the component securities threshold is also designed to address for the EM Index.

The Exchange further notes that EM Options are currently listed for trading on the Exchange and that the Exchange generally adds new series after an expiration, which allows trading to commence in the new series on the first trading day after the expiration date. The Exchange currently lists EM options that expire monthly, as well as Friday-expiring weekly options. In addition to this, the Exchange offers FLEX options on this index, which may only be listed if the standard options on an index are authorized to be listed. Specifically, without the Commission's approval, additional series of weekly EM options may no longer be scheduled to be added, nor will additional monthly series after expiration on January 17, 2020, which would allow trading to commence in the additional series on the next trading day of January 20, 2020.

In light of MSCI's November 2019 inclusion, market participants have already begun to express concern to the Exchange regarding interruption in their trading of series on the EM Index come January 2020 as a result of non-compliance with the Exchange's component securities threshold. Indeed, market participants that intend to write optionality with weekly expiration dates in the first weeks of January 2020 will, instead, have to take their volume OTC. This poses counter party risks to which a market participant would not otherwise have exposure if series were available on the EM Index. The inability to add the EM options would be a detriment to market participants seeking to hedge portfolios indexed to the EM Index, positions in ETPs based on the EM Index (*e.g.,* EEM), options on EEM and futures on the EM Index, and European-traded derivatives on the EM Index. Further, there are ETPs that use options on the EM Index as part of their investment strategy. Without the ability to add the EM options, these ETPs could be unable to achieve their investment objective, to the detriment of investors. Additionally, to the extent market participants want to roll a position in EM options that expire in January to series at a later expiration date and at a favorable or comparable price, they will be prevented from doing so without the Commission's approval for continued listing. Furthermore, in the time in which the Exchange may not list additional series on the EM Index, FLEX trades which may result in the creation of new FLEX series will be nullified, which may cause confusion and prove burdensome to market participants.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[17] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [18] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to

[15] *See id.*

[16] The Exchange also notes that the generic listing standards applicable to ETPs listed on other national securities exchanges (*e.g.,* Cboe BZX Exchange Rule 14.11(c)(3)(A)(ii)) do not include any requirements based on the increase or decrease in component securities, and instead only require that an ETP based on an index that includes non-U.S. component stocks includes at least 20 component securities, among other diversification, liquidity, and market cap requirements. As such, an ETP based on the EM Index would not be delisted based on a percentage increase or decrease in component securities as long as it continued to have at least 20 component securities. Therefore, the Exchange believes that the proposed threshold is more restrictive than the current standard for listing products on the EM Index.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [19] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the Commission's approval to continue listing options on the EM Index will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, because it will allow the Exchange to continue to list EM Options in light of the recent inclusion plan exceptions to MSCI's normal course of reviews. As stated above, the 10% threshold is intended to prevent significant changes over shorter periods of time in the EM Index that might potentially change the character of the index or make it more susceptible to manipulation. Given that the EM Index itself is designed to capture and allow for continuous emerging market growth and trends and that the 17% constituent increase appears to be only a temporary departure from the normal incremental growth experienced by the EM Index, the Exchange does not believe that the recent increase changes the character of the EM Index or otherwise raises concerns of market manipulation and/or disruption in the underlying markets. As a general principle, increases in the elements that make up an index, such as market capitalization and the weight and number component securities, do not in and of themselves do not lead to manipulation and/or disruption. This general principle applies to the recent inclusions, therefore, the Exchange does not believe the index has become susceptible to manipulation and/or disruption as a result. Although significant decreases, not increases, would be more likely to raise concerns related to manipulation and/or disruption in the underlying markets, the Exchange notes that it does not believe that a decrease in the number of constituents in any index, even by an amount greater than 10%, necessarily creates manipulation concerns. The Exchange also does not believe that the EM Index is otherwise easily susceptible to manipulation, as it is a broad-based index, its component securities have a high market capitalization, it has an average daily volume of over 42 billion, and no single component comprises more than 4.5% of the index. The Exchange also notes that a total component securities standard, as provided in Rule 4.10(i)(2), is not essential to the continued listing standards for EM Index-based products, and, instead, is an additional protection against potential manipulation and/or disruption in the underlying securities. Because the EM Index has continued to experience incremental increases in component securities (notwithstanding the exceptional increase as a result of the 2019 inclusion plan), capitalization, and market liquidity in line with continuous emerging market growth trends and the EM's overall investment objectives, the Exchange does not believe that the continued listing of the EM Index following the inclusion plan would circumvent the additional protections of the component securities threshold nor would it affect the protection of investors and the maintenance of a fair and orderly market. In addition to this, the Exchange continues to maintain and review country and index watch lists, as well as conduct intermediate reviews on at least a quarterly basis. Thus, it continues to be able to identify potential compliance concerns in connection with the continued listing standards and may cease listing series on the EM Index at any time if it determines that a change in the index's composition would affect the protection of investors.

As stated above, without the Commission's approval, the Exchange would not be able to list new series of weekly or monthly options on the EM Index after the January 2020 review. The Exchange believes that the Commission's approval to continue listing options on the EM Index is necessary for the protection of investors and the public interest, as without such, the Exchange will be prevented from adding the weekly and monthly EM options. Indeed, market participants that intend to write optionality with weekly expiration dates in the first weeks of January 2020 will, instead, have to take their volume OTC. OTC poses counter party risks for investors that they would not normally otherwise choose to be subject to if series on the EM Index were available for trading. The inability to add the EM options would be a detriment to market participants seeking to hedge positions in ETPs based on the EM Index (*e.g.,* EEM), options on EEM and EM futures, and European-traded derivatives on the EM Index. Further, there are ETPs that use options on the EM Index as part of their investment strategy. Without the ability to add the EM options, these ETPs could be unable to achieve their investment objective, to the detriment of investors. Additionally, market participants that wish to roll a position in EM options that expire in January to a position in a series with a later expiration month at a favorable or comparable price, will be prevented from doing so without this amendment. Furthermore, in the time in which the Exchange may not list additional series on EM, FLEX trades which may result in the creation of new FLEX series will be nullified, which may cause confusion and prove burdensome to market participants. The Exchange also notes that since the last inclusion phase was implemented in MSCI's November 2019 review, multiple market participants have expressed their concern to the Exchange regarding interruption of their activity in EM Index series as a result of anticipated non-compliance with the component securities threshold.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the continued listing of options on the EM Index, and the Commission's approval of which the Exchange seeks, would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the continued listing would impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the Act as it would facilitate the continued, uninterrupted trading of options on the EM Index, on which series are currently listed and readily available for all market participants to trade, as would be the case for series added following the approval for the EM Index's continued listing.

The Exchange does not believe that the continued listing of options on the EM Index would impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the Act as it does not alter the types of products offered by the Exchange in which market participants already may choose to participate. The Commission's approval would merely allow the Exchange to continue listing certain index options in light of the MSCI's recent completion of its inclusion plan and the Exchange would continue to adequately surveil for any concerning changes.

[19] *Id.*

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. 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 Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2019–122 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2019–122. 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 this filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2019–122 and should be submitted on or before January 21, 2020.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the Exchange's proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[20] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5)[21] of the Exchange Act, which requires, among other things, that the rules of a national securities exchange be 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 not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission first notes the Exchange's statement that the 17% increase in component securities from July 2019 to November 2019 under MSCI's recent inclusion plans is an isolated departure from the 4.5% average six-month increases the MSCI EM Index has since 2015. Additionally, the Exchange points out that the 10% component-securities threshold was the only threshold implicated as a result of MSCI's inclusion plan, and that the other threshold tests applicable to the EM Index under Rule 4.10(h) will be met as-of January 1, 2020.

Furthermore, the Exchange explains that the 10% component-securities threshold under Rule 4.10(i) is designed to prevent significant adjustments to the number of EM Index constituents, particularly decreases, that could: (i) Reduce component securities in the EM Index to a point that would raise manipulation concerns; or (ii) change the general character of the EM Index over which index options are issued. The Exchange states that the 10% component-securities threshold is designed to allow for the more rapid, shorter-term changes, such as the recent 4.5% average six-month increases the MSCI EM Index has typically and steadily experienced since 2015. The Exchange also does not believe that the EM Index is otherwise easily susceptible to manipulation, as it is a broad-based index, its component securities have a high market capitalization, it has an average daily volume of over 42 billion, and no single component comprises more than 4.5% of the index. Finally, the Exchange asserts that as a general principle, increases in the elements that make up an index, such as market capitalization and the weight and number component securities, do not in and of themselves lead to manipulation and/or disruption; the Exchange then concludes that this general principle applies to the recent MSCI inclusions of its EM Index.

Based on the foregoing and after careful consideration, the Commission finds it consistent with Exchange Act to to allow the Exchange to open for trading any additional series of options of MSCI EM options class notwithstanding the maintence standard set forth in Rule 4.10(i). The Commission believes that allowing an exception to the 10% component-securities threshold under these specific circumstances is consistent with the purpose behind Rule 4.10, and therefore, is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market. Specifically, the increase in component securities under the recent MSCI inclusion plan does not appear likely to lead to market manipulation or disruption. Furthermore, this 17% increase in component securities does not appear to change the general character of the EM Index over which index options are issued. Accordingly, Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act.

The Exchange has requested that Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of in the **Federal Register**. The Exchange represents that, although MSCI announced the inclusion phase-in plan prior to its implementation, the number of component securities actually added (or removed as part of MSCI's regular quarterly reviews) in each phase was unknown until the August 2019 and November 2019 review releases. Furthemore, the Exchange asserts that investors and other market participants will likely be harmed if the Exchange is not able to list new series of weekly or monthly options on the EM Index after January 1, 2020. First, market participants that intend to write optionality with weekly expiration dates in the first weeks of January 2020 will, instead, have to take their volume OTC; the Exchange believes that OTC poses

[20] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 15 U.S.C. 78f(b)(5).

counter party risks for investors that they would not normally otherwise choose to be subject to if series on the EM Index were available for trading. Next, the Exchange states that the inability to add the EM options would be a detriment to market participants seeking to hedge positions in ETPs based on the EM Index (*e.g.,* EEM), options on EEM and EM futures, and European-traded derivatives on the EM Index. Likewise, the Exchange notes that there are ETPs that use options on the EM Index as part of their investment strategy. Without the ability to add the EM options, these ETPs could be unable to achieve their investment objective, which the Exchange believes would be to the detriment of investors. Additionally, the Exchange states that market participants that wish to roll a position in EM options that expire in January to a position in a series with a later expiration month at a favorable or comparable price, will be prevented from doing so should the Commission not approve this proposal prior to January 1, 2020.

Based on the foregoing, the Commission believes that good cause exists to issue this order approving a one-time exception to the 10% component-securities threshold under Rule 4.10(i) prior to the 30th day after the date of publication of notice of in the **Federal Register**. Approving the proposed rule change on an accelerated basis should protect investors and the public interest from potential harm that might arise from a disruption in the listing of classes of options on the MSCI Emerging Markets Index. Accordingly, pursuant to Section 19(b)(2) of the Exchange Act,[22] the Commission finds good cause to approve the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[23] that the proposed rule change (SR–CBOE–2019–122) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–28215 Filed 12–30–19; 8:45 am]

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[22] 15 U.S.C. 78s(b)(2).

[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87856; File No. SR–CboeBZX–2019–107]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Adopt Rule 14.11(m), Portfolio Fund Shares, and To List and Trade Shares of the Fidelity Value ETF, Fidelity Growth ETF, and Fidelity Opportunistic ETF, Each a Series of the Fidelity Beach Street Trust, Under Proposed Rule 14.11(m)

December 23, 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 December 12, 2019, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes a rule change to adopt Rule 14.11(m), Portfolio Fund Shares, and to list and trade shares of the Fidelity Value ETF, Fidelity Growth ETF, and Fidelity Opportunistic ETF (each a ''Fund'' and, collectively, the ''Funds''), each a series of the Fidelity Beach Street Trust (the ''Trust''), under such proposed Rule 14.11(m). The shares of each Fund are referred to herein as the ''Shares.'' The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add new Rule 14.11(m)[3] for the purpose of permitting the listing and trading, or trading pursuant to unlisted trading privileges, of Portfolio Fund Shares, which are securities issued by an actively managed open-end management investment company.[4]

Proposed Rule 14.11(m)

Proposed Rule 14.11(m)(3)(A) provides that the term ''Portfolio Fund Share'' means a security that: (i) Represents an interest in a registered investment company (''Investment Company'') organized as an open-end management investment company or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange notes that it is proposing new Rule 14.11(m) because it has also proposed a new Rule 14.11(k) and new Rule 14.11(l) under two separate proposals. *See* Securities Exchange Act Release Nos. 87062 (September 23, 2019), 84 FR 51193 (September 27, 2019) (SR–CboeBZX–2019–047) and 87560 (November 18, 2019), 84 FR 64607 (November 22, 2019) (CboeBZX–2019–097).

[4] The basis of this proposal are several applications for exemptive relief that were filed with the Commission and for which public notice was issued on November 14, 2019 (the ''Notice'') and subsequent order granting certain exemptive relief to, among others, Fidelity Management & Research Company and FMR Co., Inc., Fidelity Beach Street Trust, and Fidelity Distributors Corporation (File No. 812–14364), issued on December 10, 2019 (the ''Order'' and, collectively, with the Application and the Notice, the ''Exemptive Order''). *See* Investment Company Act Release Nos. 33683 and 33712. The Order specifically notes that ''granting the requested exemptions is appropriate in and consistent with the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. It is further found that the terms of the proposed transactions, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transactions are consistent with the policy of each registered investment company concerned and with the general purposes of the Act.'' The Exchange notes that it also referred to the application for exemptive relief orders for T. Rowe Price Associates, Inc. and T. Rowe Price Equity Series, Inc. (File No. 812–14214 and Investment Company Act Release Nos. 33685 and 33713), Natixis ETF Trust II, et al. (File No. 812–14870 and Investment Company Act Release Nos. 33684 and 33711), Blue Tractor ETF Trust and Blue Tractor Group, LLC (File No. 812–14625 and Investment Company Act Release Nos. 33682 and 33710), and Gabelli ETFs Trust, et al. (File No. 812–15036 and Investment Company Act Release Nos. 33681 and 33708). While there are certain differences between the applications, the Exchange believes that each would qualify as Portfolio Fund Shares under proposed Rule 14.11(m).

similar entity, that: (a) Invests in a portfolio of securities selected by the Investment Company's investment adviser consistent with the Investment Company's investment objectives and policies; and (b) will at a minimum disclose the Fund Portfolio within at least 60 days following the end of every fiscal quarter; (ii) is issued in a specified aggregate minimum number in return for a deposit of a specified portfolio of securities and/or a cash amount with a value equal to the next determined net asset value; and (iii) when aggregated in the same specified minimum number, may be redeemed at a holder's request, which holder will be paid a specified portfolio of securities and/or cash with a value equal to the next determined net asset value.

Proposed Rule 14.11(m)(1) provides that the Exchange will consider for trading, whether by listing or pursuant to unlisted trading privileges, Portfolio Fund Shares that meet the criteria of this Rule.

Proposed Rule 14.11(m)(2) provides that this proposed Rule is applicable only to Portfolio Fund Shares. Except to the extent inconsistent with this Rule, or unless the context otherwise requires, the rules and procedures of the Board of Directors shall be applicable to the trading on the Exchange of such securities. Portfolio Fund Shares are included within the definition of ''security'' or ''securities'' as such terms are used in the Rules of the Exchange.

Proposed Rule 14.11(m)(2)(A)–(D) provide that the Exchange will file separate proposals under Section 19(b) of the Act before the listing of Portfolio Fund Shares; that transactions in Portfolio Fund Shares will occur throughout the Exchange's trading hours; the minimum price variation for quoting and entry of orders in Portfolio Fund Shares is $0.01; and that the Exchange will implement written surveillance procedures for Portfolio Fund Shares.

Proposed Rule 14.11(m)(3)(B) provides that the term ''Fund Portfolio'' means the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company's calculation of net asset value at the end of the business day.

Proposed Rule 14.11(m)(3)(C) provides that the term ''Reporting Authority'' in respect of a particular series of Portfolio Fund Shares means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Portfolio Fund Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, the Proxy Basket; the Fund Portfolio; the amount of any cash distribution to holders of Portfolio Fund Shares, net asset value, or other information relating to the issuance, redemption or trading of Portfolio Fund Shares. A series of Portfolio Fund Shares may have more than one Reporting Authority, each having different functions.

Proposed Rule 14.11(m)(3)(D) provides that the term ''Proxy Basket'' means the identities and quantities of the securities and other assets included in a basket that is designed to closely track the daily performance of the holdings of a series of Portfolio Fund Shares, as provided in the exemptive relief applicable to a series of Portfolio Fund Shares. The Proxy Basket also serves as the creation and redemption basket for a series of Portfolio Fund Shares. The Proxy Basket will be constructed as provided in the applicable exemptive relief and will be fully described in the proposal required under Rule 14.11(m)(2)(A). The website for each series of Portfolio Fund Shares shall disclose the following information regarding the Proxy Basket as required under this Rule 14.11(m), to the extent applicable: (i) Ticker symbol; (ii) CUSIP or other identifier; (iii) Description of the holding; (iv) Identity of the security, commodity, index, or other asset upon which the derivative is based; (v) The strike price for any options; (vi) The quantity of each security or other asset held as measured by: (a) Par value; (b) Notional value; (c) Number of shares; (d) Number of contracts; (e) Number of units; (vii) Maturity date; (viii) Coupon rate; (ix) Effective date; (x) Market value; and (xi) Percentage weighting of the holding in the portfolio.

Proposed Rule 14.11(m)(4)(A) provides the initial listing criteria for a series of Portfolio Fund Shares, which include the following: (A) Each series of Portfolio Fund Shares will be listed and traded on the Exchange subject to application of the following initial listing criteria: (i) For each series, the Exchange will establish a minimum number of Portfolio Fund Shares required to be outstanding at the time of commencement of trading on the Exchange; (ii) the Exchange will obtain a representation from the issuer of each series of Portfolio Fund Shares that the net asset value per share for the series will be calculated daily and that each of the following will be made available to all market participants at the same time when disclosed: The net asset value, the Proxy Basket, and the Fund Portfolio.

Proposed Rule 14.11(m)(4)(B) provides that each series of Portfolio Fund Shares will be listed and traded on the Exchange subject to application of the following continued listing criteria: (i)(a) The Proxy Basket will be disseminated at least once daily and will be made available to all market participants at the same time; and (b) the Reporting Authority that provides the Proxy Basket must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the Proxy Basket; (ii) the Fund Portfolio will at a minimum be disclosed within at least 60 days following the end of every fiscal quarter and will be made available to all market participants at the same time; and (b) the Reporting Authority that provides the Fund Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the Fund Portfolio; (iii) upon termination of an Investment Company, the Exchange requires that Portfolio Fund Shares issued in connection with such entity be removed from listing on the Exchange; and (iv) voting rights shall be as set forth in the applicable Investment Company prospectus or Statement of Additional Information.

Additionally, proposed Rule 14.11(m)(4)(B)(iv) provides that the Exchange will consider the suspension of trading in and will commence delisting proceedings for a series of Portfolio Fund Shares pursuant to Rule 14.12 under any of the following circumstances: (a) If, following the initial twelve-month period after commencement of trading on the Exchange of a series of Portfolio Fund Shares, there are fewer than 50 beneficial holders of the series of Portfolio Fund Shares for 30 or more consecutive trading days; (b) if either the Proxy Basket or Fund Portfolio is not made available to all market participants at the same time; (c) if the Investment Company issuing the Portfolio Fund Shares has failed to file any filings required by the Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any exemptive order or no-action relief granted by the Commission to the Investment Company with respect to the series of Portfolio Fund Shares; (d) if any of the requirements set forth in this rule are not continuously maintained; (e) if any of the applicable Continued

Listing Representations for the issue of Portfolio Fund Shares are not continuously met; or (f) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Proposed Rule 14.11(m)(5) provides that neither the Exchange, the Reporting Authority, nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any current portfolio value; the current value of the portfolio of securities required to be deposited to the open-end management investment company in connection with issuance of Portfolio Fund Shares; the amount of any dividend equivalent payment or cash distribution to holders of Portfolio Fund Shares; net asset value; or other information relating to the purchase, redemption, or trading of Portfolio Fund Shares, resulting from any negligent act or omission by the Exchange, the Reporting Authority or any agent of the Exchange, or any act, condition, or cause beyond the reasonable control of the Exchange, its agent, or the Reporting Authority, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission, or delay in the reports of transactions in one or more underlying securities.

Proposed Rule 14.11(m)(6) provides that the provisions of this subparagraph apply only to series of Portfolio Fund Shares that are the subject of an order by the Commission exempting such series from certain prospectus delivery requirements under Section 24(d) of the Investment Company Act of 1940 (the ''1940 Act'') and are not otherwise subject to prospectus delivery requirements under the Securities Act of 1933. The Exchange will inform its members regarding application of these provisions of this subparagraph to a particular series of Portfolio Fund Shares by means of an information circular prior to commencement of trading in such series. The Exchange requires that members provide to all purchasers of a series of Portfolio Fund Shares a written description of the terms and characteristics of those securities, in a form prepared by the open-end management investment company issuing such securities, not later than the time a confirmation of the first transaction in such series is delivered to such purchaser. In addition, members shall include such a written description with any sales material relating to a series of Portfolio Fund Shares that is provided to customers or the public. Any other written materials provided by a member to customers or the public making specific reference to a series of Portfolio Fund Shares as an investment vehicle must include a statement in substantially the following form: ''A circular describing the terms and characteristics of (the series of Portfolio Fund Shares) has been prepared by the (open-end management investment company name) and is available from your broker. It is recommended that you obtain and review such circular before purchasing (the series of Portfolio Fund Shares).'' A member carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase a series of Portfolio Fund Shares for such omnibus account will be deemed to constitute agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to members under this rule. Upon request of a customer, a member shall also provide a prospectus for the particular series of Portfolio Fund Shares.

Proposed Rule 14.11(m)(7) provides that if the investment adviser to the Investment Company issuing Portfolio Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect and maintain a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio and Proxy Basket. Personnel who make decisions on the Investment Company's portfolio composition and/or Proxy Basket must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio and/or Proxy Basket.

Policy Discussion—Proposed Rule 14.11(m)

The purpose of the structure of Portfolio Fund Shares is to provide investors with the traditional benefits of ETFs while protecting funds from the potential for front running or free riding of portfolio transactions, which could adversely impact the performance of a fund. While each series of Portfolio Fund Shares will be actively managed and, to that extent, similar to Managed Fund Shares (as defined in Rule 14.11(i)), Portfolio Fund Shares differ from Managed Fund Shares in one key way.[5] A series of Portfolio Fund Shares will disclose the Proxy Basket on a daily basis which, as described above, is designed *to closely track* the performance of the holdings of the Investment Company, instead of the *actual holdings* of the Investment Company, as provided by a series of Managed Fund Shares.[6]

For the arbitrage mechanism for any ETF to function effectively, authorized participants, arbitrageurs, and other market participants (collectively, ''Market Makers'') need sufficient information to accurately value shares of a fund to transact in both the primary and secondary market. The Proxy Basket, constructed as provided in the applicable exemptive relief, is designed to closely track the daily performance of the holdings of a series of Portfolio Fund Shares.

Given the correlation between the Proxy Basket and the Fund Portfolio,[7]

[5] The Exchange notes that there are two additional differences between proposed Rule 14.11(m) and Rule 14.11(i): (i) Proposed Rule 14.11(m) would require a rule filing under Section 19(b) prior to listing any product on the Exchange meaning that no series of Portfolio Fund Shares could be listed on the Exchange pursuant to Rule 19b–4(e) and there are no proposed rules comparable to the quantitative portfolio holdings standards from Rule 14.11(i); and (ii) proposed Rule 14.11(m) would not require the dissemination of an intraday indicative value. The Exchange has submitted a proposal to eliminate the requirement for series of Managed Fund Shares and generally agrees with the Commission's sentiment that the intraday indicative value is not necessary to support the arbitrage mechanism. *See* SR–CboeBZX–2019–104 and Investment Company Act Release No. 10695 (October 24, 2019) (84 FR 57162).

[6] Proposed Rule 14.11(m)(4)(B)(iii) will, however, require each series of Portfolio Fund Shares to at a minimum disclose the entirety of its portfolio holdings within at least 60 days following the end of every fiscal quarter in accordance with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act.

Form N–PORT requires reporting of a fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a fund's Statement of Additional Information, its Shareholder Reports, its Form N–CSR, filed twice a year, and its Form N–CEN, filed annually. A fund's SAI and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N–PORT, Form N–CSR, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov.*

[7] As provided in the Notices, funds and their respective advisers will take remedial actions as necessary if the funds do not function as anticipated. For the first three years after a launch, a fund will establish certain thresholds for its level of tracking error, premiums/discounts, and spreads, so that, upon the fund's crossing a threshold, the adviser will promptly call a meeting of the fund's board of directors and will present the board or committee with recommendations for appropriate remedial measures. The board would then consider the continuing viability of the fund, whether shareholders are being harmed, and what, if any,

the Exchange believes that the Proxy Basket would serve as a pricing signal to identify arbitrage opportunities when its value and the secondary market price of the shares of a series of Portfolio Fund Shares diverge. If shares began trading at a discount to the Proxy Basket, an authorized participant could purchase the shares in secondary market transactions and, after accumulating enough shares to comprise a creation unit,[8] redeem them in exchange for a redemption basket reflecting the Net Asset Value (''NAV'') per share of the fund's portfolio holdings. The purchases of Shares would reduce the supply of Shares in the market, and thus tend to drive up the Shares' market price closer to the fund's NAV. Alternatively, if shares are trading at a premium, the transactions in the arbitrage process are reversed. Market Makers also can engage in arbitrage without using the creation or redemption processes. For example, if a fund is trading at a premium to the Proxy Basket, Market Makers may sell shares short and take a long position in the Proxy Basket securities, wait for the trading prices to move toward parity, and then close out the positions in both the shares and the securities, to realize a profit from the relative movement of their trading prices. Similarly, a Market Maker could buy shares and take a short position in the Proxy Basket securities in an attempt to profit when shares are trading at a discount to the Proxy Basket.

Overall, the Exchange believes that the arbitrage process would operate similarly to the arbitrage process in place today for existing ETFs that use in-kind baskets for creations and redemptions that do not reflect the ETF's complete holdings but nonetheless produce performance that is highly correlated to the performance of the ETF's actual portfolio. The Exchange has observed highly efficient trading of ETFs that invest in markets where security values are not fully known at the time of ETF trading, and where a perfect hedge is not possible, such as international equity and fixed-income ETFs. While the ability to value and hedge many of these existing ETFs in the market may be limited, such ETFs have generally maintained an effective arbitrage mechanism and traded efficiently.

As provided in the Notice, the Commission believes that an arbitrage mechanism based largely on the combination of a daily disclosed Proxy Basket and at a minimum quarterly disclosure of the Fund Portfolio can work in an efficient manner to maintain a fund's secondary market prices close to its NAV.[9] Consistent with the Commission's view, the Exchange believes that because the arbitrage mechanism for Portfolio Fund Shares will be sufficient to keep secondary market prices in line with NAV and because the proposed rules are except as described above nearly identical to the generic listing standards for Managed Fund Shares, proposed Rule 14.11(m) is consistent with the Act.

The Exchange notes that while the Proxy Basket does not reflect the 1-for-1 holdings of each series of Portfolio Fund Shares, a significant amount of information about the holdings is publicly available at all times. Each series will disclose the Proxy Basket on a daily basis. Each series of Portfolio Fund Shares will at a minimum disclose the entirety of its portfolio holdings, including the name, identifier, market value and weight of each security and instrument in the portfolio within at least 60 days following the end of every fiscal quarter in a manner consistent with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act.

While not providing daily disclosure of the Fund Portfolio could open the door to potential information leakage and misuse of material non-public information. However, the Exchange believes that proposed Rule 14.11(m)(7) provides sufficient safeguards to prevent such leakage and misuse because the fire wall requirement will act to make sure that no entity will be able to misuse the data for their own purposes and the requirement related to information protection will act as a deterrent to any misuse and improper dissemination of a fund's portfolio composition and other material non-public information.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of Portfolio Fund Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of Portfolio Fund Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products. The Exchange will require the issuer of each series of Portfolio Fund Shares listed on the Exchange to represent to the Exchange that it will 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 Exchange Act, the Exchange will surveil 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 Exchange Rule 14.12. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Trading Halts

As described above, proposed Rule 14.11(m)(4)(B)(iv) provides that if the Exchange becomes aware that one of the following is not being made available to all market participants at the same time, respectively: The net asset value, the Proxy Basket, or the Fund Portfolio with respect to a series of Portfolio Fund Shares; then the Exchange will halt trading in such series until such time as the net asset value, the Proxy Basket, or the Fund Portfolio is available to all market participants, as applicable.

Availability of Information

As noted above, Form N–PORT requires reporting of a fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a fund's Statement of Additional Information, its Shareholder Reports, its Form N–CSR, filed twice a year, and its Form N–CEN, filed annually. A fund's SAI and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N–PORT, Form N–CSR, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov.*

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will

action would be appropriate. Specifically, the Applications and Notices provide that such a meeting would occur: (1) If the tracking error exceeds 1%; or (2) if, for 30 or more days in any quarter or 15 days in a row (a) the absolute difference between either the market closing price or bid/ask price, on one hand, and NAV, on the other, exceeds 2%, or (b) the bid/ask spread exceeds 2%.

[8] Portfolio Fund Shares will be purchased or redeemed only in large aggregations, or ''creation units,'' and the Proxy Basket will constitute the names and quantities of instruments for both purchases and redemptions of Creation Units.

[9] *See* Fidelity Notice at 17. The Commission also notes that as long as arbitrage continues to keep the Fund's secondary market price and NAV close, and does so efficiently so that spreads remain narrow, that investors would benefit from the opportunity to invest in active strategies through a vehicle that offers the traditional benefits of ETFs.

be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line.

Trading Rules

The Exchange deems Portfolio Fund Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. As provided in proposed Rule 14.11(m)(2)(C), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is $0.01.

Information Circular

Prior to the commencement of trading of a series of Portfolio Fund Shares, the Exchange will inform its members in an Information Circular (''Circular'') of the special characteristics and risks associated with trading the Shares. Specifically, the Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares; (2) BZX Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (3) how information regarding the Proxy Basket is disseminated; (4) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) trading information; and (6) that the Fund Portfolio of the Shares are not disclosed on a daily basis.

In addition, the Circular will reference that Funds are subject to various fees and expenses described in the Registration Statement. The Circular will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act. The Circular will also disclose that the NAV for the Shares will be calculated after 4:00 p.m., E.T. each trading day.

The Shares

The Shares are offered by the Trust, which is organized as a business trust under the laws of The Commonwealth of Massachusetts. The Trust is registered with the Commission as an open-end investment company and will file a registration statement on behalf of the Funds on Form N–1A (''Registration Statement'') with the Commission.[10] Fidelity Management & Research Company or FMR Co., Inc. (the ''Adviser'') will be the investment adviser to the Funds. The Adviser is not registered as a broker-dealer, but is affiliated with numerous broker-dealers. The Adviser represents that a fire wall exists and will be maintained between the respective personnel at the Adviser and affiliated broker-dealers with respect to access to information concerning the composition and/or changes to each Fund's portfolio and Proxy Basket. Personnel who make decisions on a Fund's portfolio composition and/or Proxy Basket shall be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio and/or Proxy Basket. The Funds' sub-advisers, FMR Investment Management (UK) Limited, Fidelity Management & Research (Hong Kong) Limited, and Fidelity Management & Research (Japan) Limited (each a ''Sub-Adviser'' and, collectively, the ''Sub-Advisers''), are not registered as a broker-dealer but are affiliated with numerous broker-dealers. Sub-Adviser personnel who make decisions regarding a Fund's portfolio and/or Proxy Basket are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund's portfolio and/or Proxy Basket. In the event that (a) the Adviser or a Sub-Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer; or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes newly affiliated with a broker-dealer; it will implement and maintain a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio and/or Proxy Basket, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio and/or Proxy Basket. Each Fund intends to qualify each year as a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended.

The Shares will conform to the initial and continued listing criteria under Rule 14.11(l) as well as all terms in the Exemptive Order. The Exchange represents that, for initial and/or continued listing, each Fund will be in compliance with Rule 10A–3 under the Act.[11] A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares of each Fund that the NAV per share of each Fund will be calculated daily and will be made available to all market participants at the same time.

Fidelity Value ETF

The Fund seeks long-term growth of capital. In order to achieve its investment objective, under Normal Market Conditions,[12] the Fund will primarily invest its assets in: (i) Securities that the Adviser believes are undervalued in the marketplace in relation to factors such as assets, sales, earnings, growth potential, or cash flow, or in relation to securities of other companies in the same industry (stocks of these companies are often called ''value'' stocks) listed on a U.S. national securities exchange or a foreign exchange that trade on such exchange contemporaneously with the Fund's Shares; and (ii) cash and Cash Equivalents.[13]

The Fund may also invest the Fund's assets in other securities and financial instruments, as summarized below. Under Normal Market Conditions, the Fund may invest up to 5% of its assets in each of U.S. exchange-traded index futures, preferred securities, and short-term US. Treasuries. The Fund may invest in ETFs to facilitate creations and redemptions using the Proxy Basket, as defined above. Except as described above, the Fund will not invest in derivative instruments or enter into short positions.[14]

[10] The Trust intends to file a post-effective amendment to the Registration Statement in the near future. The descriptions of the Funds and the Shares contained herein are based, in part, on information that will be included 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).

[11] *See* 17 CFR 240.10A–3.

[12] 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.

[13] For purposes of this proposal and as defined in Rule 14.11(i)(4)(C)(iii), Cash Equivalents are short-term instruments with maturities of less than three months that are: (i) U.S. Government securities, including bills, notes, and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (ii) certificates of deposit issued against funds deposited in a bank or savings and loan association; (iii) bankers acceptances, which are short-term credit instruments used to finance commercial transactions; (iv) repurchase agreements and reverse repurchase agreements; (v) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; (vi) commercial paper, which are short-term unsecured promissory notes; and (vii) money market funds.

[14] The Adviser notes that the Fund may by virtue of its holdings be issued warrants and rights. The

The Exchange notes that the Fund's holdings will meet the generic listing standards applicable to series of Managed Fund Shares under Rule 14.11(i)(4)(C). While such standards do not apply directly to series of Portfolio Fund Shares, the Exchange believes that the overarching policy issues related to liquidity, market cap, diversity, and concentration of portfolio holdings that Rule 14.11(i)(4)(C) is intended to address are equally applicable to series of Portfolio Fund Shares.

Fidelity Growth ETF

The Fund seeks growth of capital over the long term. In order to achieve its investment objective, under Normal Market Conditions, the Fund will primarily invest its assets in: (i) Securities that the Adviser believes have above-average growth potential (stocks of these companies are often called ''growth'' stocks) that are listed on a U.S. national securities exchange or a foreign exchange that trade on such exchange contemporaneously with the Fund's Shares; and (ii) cash and Cash Equivalents.

The Fund may also invest the Fund's assets in other securities and financial instruments, as summarized below. Under Normal Market Conditions, the Fund may invest up to 5% of its assets in each of U.S. exchange-traded index futures, preferred securities, and short-term US. Treasuries. The Fund may invest in ETFs to facilitate creations and redemptions using the Proxy Basket, as defined above. Except as described above, the Fund will not invest in derivative instruments or enter into short positions.[15]

The Exchange notes that the Fund's holdings will meet the generic listing standards applicable to series of Managed Fund Shares under Rule 14.11(i)(4)(C). While such standards do not apply directly to series of Portfolio Fund Shares, the Exchange believes that the overarching policy issues related to liquidity, market cap, diversity, and concentration of portfolio holdings that Rule 14.11(i)(4)(C) is intended to address are equally applicable to series of Portfolio Fund Shares.

Fidelity Opportunistic ETF

The Fund seeks long-term growth of capital. In order to achieve its investment objective, under Normal Market Conditions, the Fund will primarily invest in (i) both ''growth'' and ''value'' stocks based on fundamental analysis of factors such as each issuer's financial condition and industry position, as well as market and economic conditions that are listed on a U.S. national securities exchange or a foreign exchange that trade on such exchange contemporaneously with the Fund's Shares; and (ii) cash and Cash Equivalents.

The Fund may also invest the Fund's assets in other securities and financial instruments, as summarized below. Under Normal Market Conditions, the Fund may invest up to 5% of its assets in each of U.S. exchange-traded index futures, preferred securities, and short-term U.S. Treasuries. The Fund may invest in ETFs to facilitate creations and redemptions using the Proxy Basket, as defined above. Except as described above, the Fund will not invest in derivative instruments or enter into short positions.[16]

The Exchange notes that the Fund's holdings will meet the generic listing standards applicable to series of Managed Fund Shares under Rule 14.11(i)(4)(C). While such standards do not apply directly to series of Portfolio Fund Shares, the Exchange believes that the overarching policy issues related to liquidity, market cap, diversity, and concentration of portfolio holdings that Rule 14.11(i)(4)(C) is intended to address are equally applicable to series of Portfolio Fund Shares.

Proxy Basket for the Proposed Funds

For the Funds, the Proxy Basket will consist of a combination of the Fund's recently disclosed portfolio holdings and representative ETFs.[17] ETFs selected for inclusion in the Proxy Basket will be consistent with the Fund's objective and selected based on certain criteria, including, but not limited to, liquidity, assets under management, holding limits and compliance considerations. Representative ETFs can provide a useful mechanism to reflect a Fund's holdings' exposures within the Proxy Basket without revealing a Fund's exact positions.[18] The Exchange notes that each Fund's NAV will form the basis for creations and redemptions for the Funds and creations and redemptions will work in a manner substantively identical to that of series of Managed Fund Shares. The Adviser expects that the Shares of the Funds will generally be created and redeemed in-kind, with limited exceptions. The names and quantities of the instruments that constitute the basket of securities for creations and redemptions will be the same as a Fund's Proxy Basket, except to the extent purchases and redemptions are made entirely or in part on a cash basis. In the event that the value of the Proxy Basket is not the same as a Fund's NAV, the creation and redemption baskets will consist of the securities included in the Proxy Basket plus or minus an amount of cash equal to the difference between the NAV and the value of the Proxy Basket, as further described below.

The Proxy Basket will be constructed utilizing a covariance matrix based on an optimization process to minimize deviations in the return of the Proxy Basket relative to the Fund. The proprietary optimization process mathematically seeks to minimize three key parameters that the Adviser believes are important to the effectiveness of the Proxy Basket as a hedge: Tracking error (standard deviation of return differentials between the Proxy Basket and the Fund), turnover cost, and basket creation cost.[19] Typically, the Proxy Basket is expected to be rebalanced on schedule with the public disclosure of the Fund's holdings; however, a new optimized Proxy Basket may be generated as frequently as daily, and therefore, rebalancing may occur more frequently at the Adviser's discretion. In determining whether to rebalance a new optimized Proxy Basket, the Adviser will consider various factors, including liquidity of the securities in the Proxy Basket, tracking error, and the cost to

Fund will not purchase such instruments and will dispose of such holdings as the Adviser determines is in the best interest of the Fund's shareholders.

[15] The Adviser notes that the Fund may by virtue of its holdings be issued warrants and rights. The Fund will not purchase such instruments and will dispose of such holdings as the Adviser determines is in the best interest of the Fund's shareholders.

[16] The Adviser notes that the Fund may by virtue of its holdings be issued warrants and rights. The Fund will not purchase such instruments and will dispose of such holdings as the Adviser determines is in the best interest of the Fund's shareholders.

[17] For purposes of this filing, the term ETF will include only Portfolio Depositary Receipts as defined in Rule 14.11(b), Index Fund Shares as defined in Rule 14.11(c), and Managed Fund Shares as defined in Rule 14.11(i), along with the equivalent products defined in the rules of other national securities exchanges.

[18] The set of ETFs that are ''representative'' to be used in the Proxy Basket will depend on certain factors, including the Fund's investment objective, past holdings, and benchmark, and may change from time to time. For example, a U.S. diversified fund benchmarked to a diversified U.S. index would use liquid U.S. exchange-traded ETFs to capture size (large, mid or small capitalization), style (growth or value) and/or sector exposures in the Fund's portfolio. Leveraged and inverse ETFs will not be included in the Proxy Basket. ETFs may constitute no more than 50% of the Proxy Basket's assets.

[19] Tracking error measures the deviations between the Proxy Basket and Fund. Turnover cost and basket creation cost are measures of the cost to create and maintain the Proxy Basket as a hedge.

create and trade the Proxy Basket.[20] For example, if the Adviser determines that a new Proxy Basket would reduce the variability of return differentials between the Proxy Basket and the Fund when balanced against the cost to trade the new Proxy Basket, rebalancing may be appropriate. The Adviser will periodically review the Proxy Basket parameters and Proxy Basket performance and process.

As noted above, each Fund will also disclose the entirety of its portfolio holdings, including the name, identifier, market value and weight of each security and instrument in the portfolio, at a minimum within at least 60 days following the end of every fiscal quarter. As described above, the Exchange notes that the concept of the Proxy Basket employed under this structure is designed to provide investors with the traditional benefits of ETFs while protecting the Funds from the potential for front running or free riding of portfolio transactions, which could adversely impact the performance of a Fund.

Policy Discussion—Proposed Funds

As discussed above, each Fund's holdings will meet the generic listing standards applicable to series of Managed Fund Shares under Rule 14.11(i)(4)(C). While such standards do not apply directly to series of Portfolio Fund Shares, the Exchange believes that the overarching policy issues related to liquidity, market cap, diversity, and concentration of portfolio holdings that Rule 14.11(i)(4)(C) is intended to address are equally applicable to series of Portfolio Fund Shares and, as such, any such concerns related to the portfolio are mitigated.

Separately and in addition to the rationale supporting the arbitrage mechanism for Portfolio Fund Shares more broadly above, the Exchange also believes that the particular instruments that may be included in each Fund's portfolio and Proxy Basket do not raise any concerns related to the Proxy Baskets being able to closely track the NAV of the Funds because such instruments include only instruments that trade on an exchange contemporaneously with the Shares. In addition, a Fund's Proxy Basket will be optimized so that it reliably and consistently correlates to the performance of the Fund. The Notice specifically states that ''in order to facilitate arbitrage, each Fund's portfolio and Tracking Basket will only include certain securities that trade on an exchange contemporaneously with the Fund's Shares. Because the securities would be exchange traded, market participants would be able to accurately price and readily trade the securities in the Tracking Basket for purposes of assessing the intraday value of the Fund's portfolio holdings and to hedge their positions in the Fund's Shares.''[21] The Exchange and Adviser agree with the Commission's conclusion.

The Adviser anticipates that the returns between a Fund and its respective Proxy Basket will have a consistent relationship and that the deviation in the returns between a Fund and its Proxy Basket will be sufficiently small such that the Proxy Basket will provide Market Makers with a reliable hedging vehicle that they can use to effectuate low-risk arbitrage trades in Fund Shares. The Exchange believes that the disclosures provided by the Funds will allow Market Makers to understand the relationship between the performance of a Fund and its Proxy Basket. Market Makers will be able to estimate the value of and hedge positions in a Fund's Shares, which the Exchange believes will facilitate the arbitrage process and help ensure that the Fund's Shares normally will trade at market prices close to their NAV. The Exchange also believes that competitive market making, where traders are looking to take advantage of differences in bid-ask spread, will aid in keeping spreads tight.

While the Proxy Basket does not reflect the 1-for-1 holdings of each Fund, a significant amount of information about each Fund's holdings is publicly available at all times. Each Fund will disclose the Proxy Basket on a daily basis. Each series of Portfolio Fund Shares will at a minimum disclose the entirety of its portfolio holdings, including the name, identifier, market value and weight of each security and instrument in the portfolio within at least 60 days following the end of every fiscal quarter in a manner consistent with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act. The website will include additional quantitative information updated on a daily basis, including, on a per Share basis for each Fund, the prior Business Day's NAV and the Closing Price or Bid/Ask Price at the time of calculation of such NAV, and a calculation of the premium or discount of the Closing Price or Bid/Ask Price against such NAV. The website will also disclose any information regarding the bid/ask spread for each Fund as may be required for other ETFs under Rule 6c–11 under the 1940 Act, as amended.

Additional Information

The Exchange represents that the Shares of the Funds will continue to comply with all other proposed requirements applicable to Portfolio Fund Shares, which also generally correspond to the requirements for Managed Fund Shares, including the dissemination of key information such as the Proxy Basket, the Fund Portfolio, and Net Asset Value, suspension of trading or removal, trading halts, surveillance, minimum price variation for quoting and order entry, the information circular, and firewalls as set forth in the proposed Exchange rules applicable to Portfolio Fund Shares and the orders approving such rules.

Price information for the exchange-listed instruments held by the Funds, including both U.S. and non-U.S. listed equity securities and U.S. exchange-listed futures will be available through major market data vendors or securities exchanges listing and trading such securities. Moreover, U.S.-listed equity securities held by the Funds will trade on markets that are a member of Intermarket Surveillance Group (''ISG'') or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[22] All futures contracts that the Funds may invest in will be traded on a U.S. futures exchange. The Exchange or the Financial Industry

[20] The Adviser uses a trading cost model to develop estimates of costs to trade a new Proxy Basket. There are essentially two elements to this cost: (1) The cost to purchase securities constituting the Proxy Basket, *i.e.,* the cost to put on the hedge for the Authorized Participant, and (2) the cost of any adjustments that need to be made to the composition of the Proxy Basket, *i.e.,* the cost to the Authorized Participant to change or maintain the hedge position. The inclusion of the trading cost model in the optimization process is intended to result in a Proxy Basket that is cost effective and liquid without compromising its tracking ability.

[21] The Exchange notes that the instruments enumerated herein are consistent with the investable universe contemplated in the Notice. Specifically, the Notice provides that ''Each Fund may invest only in ETFs, Exchange-traded notes, Exchange-traded common stocks, common stocks listed on a foreign exchange that trade on such exchange contemporaneously with the Shares, Exchange-traded preferred stocks, Exchange-traded American depositary receipts, Exchange-traded real estate investment trusts, Exchange-traded commodity pools, Exchange-traded metals trusts, Exchange-traded currency trusts, and exchange-traded futures that trade contemporaneously with the Shares, as well as cash and cash equivalents . . . All futures contracts that a Fund may invest in will be traded on a U.S. futures exchange. For these purposes, an ''Exchange'' is a national securities exchange as defined in section 2(a)(26) of the [1940] Act.'' *See* Notice at 10.

[22] For a list of the current members of ISG, *see www.isgportal.com.* The Exchange notes that not all components of the Funds may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

Regulatory Authority (''FINRA''), on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares, underlying U.S. exchange-listed equity securities, and U.S. exchange-listed futures with other markets and other entities that are members of the Intermarket Surveillance Group (''ISG''), and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading such instruments from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares, underlying equity securities, and U.S. exchange-listed futures from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

All statements and representations made in this filing regarding the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of reference asset and intraday indicative values (as applicable), or the applicability of Exchange listing rules specified in this filing shall constitute continued listing requirements for the Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Funds or Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. FINRA conducts certain 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. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures with respect to such Fund under Exchange Rule 14.12.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act [23] in general and Section 6(b)(5) of the Act [24] 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 proposed Rule 14.11(m) is designed to prevent fraudulent and manipulative acts and practices in that the proposed rules relating to listing and trading of Portfolio Fund Shares provide specific initial and continued listing criteria required to be met by such securities. Proposed Rule 14.11(m)(4)(A) provides the initial listing criteria for a series of Portfolio Fund Shares, which include the following: (A) Each series of Portfolio Fund Shares will be listed and traded on the Exchange subject to application of the following initial listing criteria: (i) For each series, the Exchange will establish a minimum number of Portfolio Fund Shares required to be outstanding at the time of commencement of trading on the Exchange; (ii) the Exchange will obtain a representation from the issuer of each series of Portfolio Fund Shares that the net asset value per share for the series will be calculated daily and that each of the following will be made available to all market participants at the same time when disclosed: The net asset value, the Proxy Basket, and the Fund Portfolio.

Proposed Rule 14.11(m)(4)(B) provides that each series of Portfolio Fund Shares will be listed and traded on the Exchange subject to application of the following continued listing criteria: (i)(a) The Proxy Basket will be disseminated at least once daily and will be made available to all market participants at the same time; and (b) the Reporting Authority that provides the Proxy Basket must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the Proxy Basket; (ii) the Fund Portfolio will at a minimum be disclosed within at least 60 days following the end of every fiscal quarter and will be made available to all market participants at the same time; and (b) the Reporting Authority that provides the Fund Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the Fund Portfolio; (iii) upon termination of an Investment Company, the Exchange requires that Portfolio Fund Shares issued in connection with such entity be removed from listing on the Exchange; and (iv) voting rights shall be as set forth in the applicable Investment Company prospectus or Statement of Additional Information.

Additionally, proposed Rule 14.11(m)(4)(B)(iv) provides that the Exchange will consider the suspension of trading in and will commence delisting proceedings for a series of Portfolio Fund Shares pursuant to Rule 14.12 under any of the following circumstances: (a) If, following the initial twelve-month period after commencement of trading on the Exchange of a series of Portfolio Fund Shares, there are fewer than 50 beneficial holders of the series of Portfolio Fund Shares for 30 or more consecutive trading days; (b) if either the Proxy Basket or Fund Portfolio is not made available to all market participants at the same time; (c) if the Investment Company issuing the Portfolio Fund Shares has failed to file any filings required by the Commission or if the Exchange is aware that the Investment Company is not in compliance with the conditions of any exemptive order or no-action relief granted by the Commission to the Investment Company with respect to the series of Portfolio Fund Shares; (d) if any of the requirements set forth in this rule are not continuously maintained; (e) if any of the applicable Continued Listing Representations for the issue of Portfolio Fund Shares are not continuously met; or (f) if such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

Proposed Rule 14.11(m)(7) proposed Rule 14.11(m)(7) provides that if the investment adviser to the Investment Company issuing Portfolio Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect and maintain a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio and Proxy Basket. Personnel who make decisions on the Investment Company's portfolio composition and/or Proxy Basket must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Investment Company portfolio and/or Proxy Basket.

The Exchange believes that these proposed rules are designed to prevent fraudulent and manipulative acts and practices related to the listing and trading of Portfolio Fund Shares because they provide meaningful requirements about both the data that will be made publicly available about the Shares (the Proxy Basket) as well as the information that will only be available to certain parties and the controls on such

[23] 15 U.S.C. 78f.

[24] 15 U.S.C. 78f(b)(5).

information. Specifically, the Exchange believes that the requirements related to information protection enumerated under proposed Rule 14.11(m)(7) will act as a strong safeguard against any misuse and improper dissemination of information related to the securities included in or changes made to the Fund Portfolio and/or the Proxy Basket. As such, the Exchange believes that this proposal is designed to prevent fraudulent and manipulative acts and practices.

As noted above, the purpose of the structure of Portfolio Fund Shares is to provide investors with the traditional benefits of ETFs while protecting funds from the potential for front running or free riding of portfolio transactions, which could adversely impact the performance of a fund. While each series of Portfolio Fund Shares will be actively managed and, to that extent, similar to Managed Fund Shares (as defined in Rule 14.11(i)), Portfolio Fund Shares differ from Managed Fund Shares in one key way.[25] A series of Portfolio Fund Shares will disclose the Proxy Basket on a daily basis which, as described above, is designed *to closely track* the performance of the holdings of the Investment Company, instead of the *actual holdings* of the Investment Company, as provided by a series of Managed Fund Shares.[26]

For the arbitrage mechanism for any ETF to function effectively, Market Makers need sufficient information to accurately value shares of a fund to transact in both the primary and secondary market. The Proxy Basket, constructed as provided in the applicable exemptive relief, is designed to closely track the daily performance of the holdings of a series of Portfolio Fund Shares.

Given the correlation between the Proxy Basket and the Fund Portfolio,[27] the Exchange believes that the Proxy Basket would serve as a pricing signal to identify arbitrage opportunities when its value and the secondary market price of the shares of a series of Portfolio Fund Shares diverge. If shares began trading at a discount to the Proxy Basket, an authorized participant could purchase the shares in secondary market transactions and, after accumulating enough shares to comprise a creation unit,[28] redeem them in exchange for a redemption basket reflecting the NAV per share of the fund's portfolio holdings. The purchases of Shares would reduce the supply of Shares in the market, and thus tend to drive up the Shares' market price closer to the fund's NAV. Alternatively, if shares are trading at a premium, the transactions in the arbitrage process are reversed. Market Makers also can engage in arbitrage without using the creation or redemption processes. For example, if a fund is trading at a premium to the Proxy Basket, Market Makers may sell shares short and take a long position in the Proxy Basket securities, wait for the trading prices to move toward parity, and then close out the positions in both the shares and the securities, to realize a profit from the relative movement of their trading prices. Similarly, a Market Maker could buy shares and take a short position in the Proxy Basket securities in an attempt to profit when shares are trading at a discount to the Proxy Basket.

Overall, the Exchange believes that the arbitrage process would operate similarly to the arbitrage process in place today for existing ETFs that use in-kind baskets for creations and redemptions that do not reflect the ETF's complete holdings but nonetheless produce performance that is highly correlated to the performance of the ETF's actual portfolio. The Exchange has observed highly efficient trading of ETFs that invest in markets where security values are not fully known at the time of ETF trading, and where a perfect hedge is not possible, such as international equity and fixed-income ETFs. While the ability to value and hedge many of these existing ETFs in the market may be limited, such ETFs have generally maintained an effective arbitrage mechanism and traded efficiently.

As provided in the Notice, the Commission believes that an arbitrage mechanism based largely on the combination of a daily disclosed Proxy Basket and at a minimum quarterly disclosure of the Fund Portfolio can work in an efficient manner to maintain a fund's secondary market prices close to its NAV.[29] Consistent with the Commission's view, the Exchange believes that the arbitrage mechanism for Portfolio Fund Shares will be sufficient to keep secondary market prices in line with NAV. This, combined with the fact that the proposed rules are, except as described above, nearly identical to the generic listing standards for Managed Fund Shares, leads the Exchange to believe that the proposed Rule 14.11(m) is consistent with the Act.

The Exchange notes that while the Proxy Basket does not reflect the 1-for-1 holdings of each series of Portfolio Fund Shares, a significant amount of information about the holdings is publicly available at all times. Each series will disclose the Proxy Basket on a daily basis. Each series of Portfolio Fund Shares will at a minimum disclose the entirety of its portfolio holdings, including the name, identifier, market value and weight of each security and instrument in the portfolio within at least 60 days following the end of every

[25] The Exchange notes that there are two additional differences between proposed Rule 14.11(m) and Rule 14.11(i): (i) Proposed Rule 14.11(m) would require a rule filing under Section 19(b) prior to listing any product on the Exchange meaning that no series of Portfolio Fund Shares could be listed on the Exchange pursuant to Rule 19b–4(e) and there are no proposed rules comparable to the quantitative portfolio holdings standards from Rule 14.11(i); and (ii) proposed Rule 14.11(m) would not require the dissemination of an intraday indicative value. The Exchange has submitted a proposal to eliminate the requirement for series of Managed Fund Shares and generally agrees with the Commission's sentiment that the intraday indicative value is not necessary to support the arbitrage mechanism. *See* SR–CboeBZX–2019–104 and Investment Company Act Release No. 10695 (October 24, 2019) (84 FR 57162).

[26] Proposed Rule 14.11(m)(4)(B)(iii) will, however, require each series of Portfolio Fund Shares to at a minimum disclose the entirety of its portfolio holdings within at least 60 days following the end of every fiscal quarter in accordance with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act.

Form N–PORT requires reporting of a fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a fund's Statement of Additional Information, its Shareholder Reports, its Form N–CSR, filed twice a year, and its Form N–CEN, filed annually. A fund's SAI and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N–PORT, Form N–CSR, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov.*

[27] As provided in the Notices, funds and their respective advisers will take remedial actions as necessary if the funds do not function as anticipated. For the first three years after a launch, a fund will establish certain thresholds for its level of tracking error, premiums/discounts, and spreads, so that, upon the fund's crossing a threshold, the adviser will promptly call a meeting of the fund's board of directors and will present the board or committee with recommendations for appropriate remedial measures. The board would then consider the continuing viability of the fund, whether shareholders are being harmed, and what, if any, action would be appropriate. Specifically, the Applications and Notices provide that such a meeting would occur: (1) If the tracking error exceeds 1%; or (2) if, for 30 or more days in any quarter or 15 days in a row (a) the absolute difference between either the market closing price or bid/ask price, on one hand, and NAV, on the other, exceeds 2%, or (b) the bid/ask spread exceeds 2%.

[28] Portfolio Fund Shares will be purchased or redeemed only in large aggregations, or ''creation units,'' and the Proxy Basket will constitute the names and quantities of instruments for both purchases and redemptions of Creation Units.

[29] *See* Fidelity Notice at 17. The Commission also notes that as long as arbitrage continues to keep the Fund's secondary market price and NAV close, and does so efficiently so that spreads remain narrow, that investors would benefit from the opportunity to invest in active strategies through a vehicle that offers the traditional benefits of ETFs.

fiscal quarter in a manner consistent with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act.

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of Portfolio Fund Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of Portfolio Fund Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products. The Exchange will require the issuer of each series of Portfolio Fund Shares listed on the Exchange to represent to the Exchange that it will 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 Exchange Act, the Exchange will surveil 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 Exchange Rule 14.12. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

As noted above, Form N–PORT requires reporting of a fund's complete portfolio holdings on a position-by-position basis on a quarterly basis within 60 days after fiscal quarter end. Investors can obtain a fund's Statement of Additional Information, its Shareholder Reports, its Form N–CSR, filed twice a year, and its Form N–CEN, filed annually. A fund's SAI and Shareholder Reports are available free upon request from the Investment Company, and those documents and the Form N–PORT, Form N–CSR, and Form N–CEN may be viewed on-screen or downloaded from the Commission's website at *www.sec.gov.*

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the CTA high-speed line. The Exchange deems Portfolio Fund Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. As provided in proposed Rule 14.11(m)(2)(C), the minimum price variation for quoting and entry of orders in securities traded on the Exchange is $0.01.

The Funds

As discussed above, each Fund's holdings will meet the generic listing standards applicable to series of Managed Fund Shares under Rule 14.11(i)(4)(C). While such standards do not apply directly to series of Portfolio Fund Shares, the Exchange believes that the overarching policy issues related to liquidity, market cap, diversity, and concentration of portfolio holdings that Rule 14.11(i)(4)(C) is intended to address are equally applicable to series of Portfolio Fund Shares and, as such, any such concerns related to the portfolio are mitigated.

Separately and in addition to the rationale supporting the arbitrage mechanism for Portfolio Fund Shares more broadly above, the Exchange also believes that the particular instruments that may be included in each Fund's portfolio and Proxy Basket do not raise any concerns related to the Proxy Baskets being able to closely track the NAV of the Funds because such instruments include only instruments that trade on an exchange contemporaneously with the Shares. In addition, a Fund's Proxy Basket will be optimized so that it reliably and consistently correlates to the performance of the Fund. The Notice specifically states that ''in order to facilitate arbitrage, each Fund's portfolio and Tracking Basket will only include certain securities that trade on an exchange contemporaneously with the Fund's Shares. Because the securities would be exchange traded, market participants would be able to accurately price and readily trade the securities in the Tracking Basket for purposes of assessing the intraday value of the Fund's portfolio holdings and to hedge their positions in the Fund's Shares.'' [30]

[30] The Exchange notes that the instruments enumerated herein are consistent with the investable universe contemplated in the Notice. Specifically, the Notice provides that ''Each Fund may invest only in ETFs, Exchange-traded notes, Exchange-traded common stocks, common stocks listed on a foreign exchange that trade on such exchange contemporaneously with the Shares, Exchange-traded preferred stocks, Exchange-traded American depositary receipts, Exchange-traded real estate investment trusts, Exchange-traded commodity pools, Exchange-traded metals trusts, Exchange-traded currency trusts, and exchange-traded futures that trade contemporaneously with the Shares, as well as cash and cash equivalents . . . All futures contracts that a Fund may invest in will be traded on a U.S. futures exchange. For these purposes, an ''Exchange'' is a national securities exchange as defined in section 2(a)(26) of the [1940] Act.'' *See* Notice at 10.

The Exchange and Adviser agree with the Commission's conclusion.

The Adviser anticipates that the returns between a Fund and its respective Proxy Basket will have a consistent relationship and that the deviation in the returns between a Fund and its Proxy Basket will be sufficiently small such that the Proxy Basket will provide Market Makers with a reliable hedging vehicle that they can use to effectuate low-risk arbitrage trades in Fund Shares. The Exchange believes that the disclosures provided by the Funds will allow Market Makers to understand the relationship between the performance of a Fund and its Proxy Basket. Market Makers will be able to estimate the value of and hedge positions in a Fund's Shares, which the Exchange believes will facilitate the arbitrage process and help ensure that the Fund's Shares normally will trade at market prices close to their NAV. The Exchange also believes that competitive market making, where traders are looking to take advantage of differences in bid-ask spread, will aid in keeping spreads tight.

While the Proxy Basket does not reflect the 1-for-1 holdings of each Fund, a significant amount of information about each Fund's holdings is publicly available at all times. Each Fund will disclose the Proxy Basket on a daily basis. Each series of Portfolio Fund Shares will at a minimum disclose the entirety of its portfolio holdings, including the name, identifier, market value and weight of each security and instrument in the portfolio within at least 60 days following the end of every fiscal quarter in a manner consistent with normal disclosure requirements otherwise applicable to open-end investment companies registered under the 1940 Act. The website will include additional quantitative information updated on a daily basis, including, on a per Share basis for each Fund, the prior Business Day's NAV and the Closing Price or Bid/Ask Price at the time of calculation of such NAV, and a calculation of the premium or discount of the Closing Price or Bid/Ask Price against such NAV. The website will also disclose any information regarding the bid/ask spread for each Fund as may be required for other ETFs under Rule 6c–11 under the 1940 Act, as amended.

The Exchange represents that the Shares of the Funds will continue to comply with all other proposed requirements applicable to Portfolio Fund Shares, which also generally correspond to the requirements for Managed Fund Shares, including the dissemination of key information such as the Proxy Basket, the Fund Portfolio,

and Net Asset Value, suspension of trading or removal, trading halts, surveillance, minimum price variation for quoting and order entry, the information circular, and firewalls as set forth in the proposed Exchange rules applicable to Portfolio Fund Shares and the orders approving such rules. Moreover, U.S.-listed equity securities held by the Funds will trade on markets that are a member of ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.[31] All statements and representations made in this filing regarding the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of reference asset and intraday indicative values (as applicable), or the applicability of Exchange listing rules specified in this filing shall constitute continued listing requirements for the Shares. The issuer has represented to the Exchange that it will advise the Exchange of any failure by a Fund or Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. FINRA conducts certain 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. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures with respect to such Fund under Exchange Rule 14.12.

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. Rather, the Exchange notes that the proposed rule change will facilitate the listing of a new type of actively-managed exchange-traded products, thus enhancing competition among both market participants and listing venues, to the benefit of investors and the marketplace.

[31] For a list of the current members of ISG, *see www.isgportal.com.* The Exchange notes that not all components of the Funds may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2019–107 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–2019–107. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2019–107, and should be submitted on or before January 21, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–28217 Filed 12–30–19; 8:45 am]

BILLING CODE 8011–01–P

[32] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 10976]

Global Magnitsky Human Rights Accountability Act Annual Report

SUMMARY: This notice contains the text of the report required by the Global Magnitsky Human Rights Accountability Act, as submitted by the Secretary of State pursuant to Executive Order 13818.

FOR FURTHER INFORMATION CONTACT: Bob Viglietta, Email: *ViglettaR@state.gov,* Phone: (202) 647–6526

SUPPLEMENTARY INFORMATION: On December 10, 2019, the Secretary of State approved the following report pursuant to Executive Order 13818 of December 20, 2017, ''Executive Order Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption'' (E.O. 13818), which builds on and implements the Global Magnitsky Human Rights Accountability Act (Pub. L. 114–328, Title XII, Subtitle F) (''the Act''). The text of the report follows:

Pursuant to Section 1264 of the Global Magnitsky Human Rights Accountability Act of 2016 (Pub. L. 114–328, Title XII, Subtitle F), and in accordance with E.O. 13818, ''Executive Order Blocking the Property of Persons Involved in Serious Human Rights

Abuse or Corruption'' the Secretary of State, in consultation with the Secretary of the Treasury, submits this report to detail the Administration's implementation of the Act in 2019.

In 2019, the United States took significant action under the Global Magnitsky sanctions program (''Global Magnitsky''). As of December 10, 2019, the United States has designated 198 foreign persons (individuals and entities) under E.O. 13818. This sanctions program, which targets human rights abusers, corrupt actors, and their enablers, represents the best of the United States' values by taking impactful steps to protect and promote human rights and combat corruption around the world. Through the Act and E.O. 13818, the United States has sought to disrupt and deter serious human rights abuse and corruption abroad; promote accountability for those who act with impunity; and protect, promote, and enforce longstanding international norms alongside our partners and allies.

As the President outlined in his National Security Strategy (NSS), liberty, free enterprise, equal justice under the law and the dignity of every human life are values that represent who we are as a people. Further, the NSS states we support with our words and actions those who live under oppressive regimes and seek freedom, individual dignity, and the rule of law. Through Global Magnitsky, the Administration is taking action to execute the President's vision as described in the NSS.

Actions taken in 2019 demonstrated the reach, flexibility, and broad scope of Global Magnitsky. The United States responded to corrupt actors in South Sudan involved in draining the country of critical resources; targeted members of a significant corruption network responsible for bribery and misappropriation of assets in South Africa; imposed consequences on a former Ugandan Police Inspector General for corruption and leading an organization engaged in human rights abuses; promoted accountability for serious human rights abuse and corruption among Iraqi militia and former governors; addressed actions of a former Mexican governor accepting bribes from narcotics trafficking organizations; and clearly demonstrated the resolve of the Administration to leverage this important tool, when appropriate, to target individuals and entities engaging in specified conduct.

When considering financial sanctions under Global Magnitsky, the United States prioritizes actions that are expected to produce a tangible and significant impact on the sanctioned persons and their affiliates, to prompt changes in behavior or disrupt the activities of malign actors. Persons sanctioned pursuant to this authority appear on the Office of Foreign Assets Control's (OFAC) List of Specially Designated Nationals and Blocked Persons (SDN List). As a result of these actions, any property or interests in property of the sanctioned persons within or transiting U.S. jurisdiction is blocked. Additionally, U.S. persons are generally prohibited from engaging in transactions with blocked persons, including entities 50 percent or more owned by designated persons. The Secretary of the Treasury, in consultation with the Secretary of State and the Attorney General, imposed financial sanctions on the following persons pursuant to Global Magnitsky:

1. Roberto Sandoval Castaneda: Sandoval Castaneda was designated on May 17, 2019, for engaging in an array of corruption activities, such as the misappropriation of state assets and the receipt of bribes from Mexican drug trafficking organizations, including the Cartel de Jalisco Nueva Generacion (CJNG). Sandoval Castaneda has held numerous public offices in his home state of Nayarit, Mexico. During this time, Sandoval Castaneda misappropriated state assets and received bribes from narcotics trafficking organizations, including CJNG, in exchange for information and protection. In a related action, OFAC designated three of Sandoval Castaneda's complicit family members who have acted or purported to act on his behalf by holding his ill-gotten assets in their names: Ana Lilia Lopez Torres (wife), Lidy Alejandra Sandoval Lopez (adult daughter), and Pablo Roberto Sandoval Lopez (adult son).

Four Mexican entities were also designated for being owned or controlled by Sandoval or a designated family member: Bodecarne, S.A. de C.V. (butcher business), Iyari (clothing and accessories store), L-Inmo, S.A. de C.V. (real estate holding company), and Valor y Principio de Dar, A. C. (land-holding foundation).

2. Rayan al-Kildani: Al-Kildani was designated on July 18, 2019, for being responsible for or complicit in, or having directly or indirectly engaged in, serious human rights abuse as the leader of the 50th Brigade, a militia operating in Iraq's Ninewa Plain. In May 2018, a video circulated among Iraqi human rights civil society organizations in which al-Kildani cut off the ear of a handcuffed detainee. The 50th Brigade is reportedly the primary impediment to the return of internally displaced persons to the Ninewa Plain. The 50th Brigade has systematically looted homes in Batnaya, which is struggling to recover from ISIS's brutal rule. The 50th Brigade has reportedly illegally seized and sold agricultural land, and the local population has accused the group of intimidation, extortion, and harassment of women.

3. Waad Qado: Qado, the leader of the 30th Brigade, a militia operating in Iraq's Ninewa Plain, was designated on July 18, 2019, for being a leader or official of an entity that has engaged in, or whose members have engaged in, serious human rights abuse relating to his tenure. The 30th Brigade has extracted money from the population around Bartalla through extortion, illegal arrests, and kidnappings. The 30th Brigade has frequently detained people without warrants, or with fraudulent warrants, and has charged arbitrary customs fees at its checkpoints. Members of the local population allege that the 30th Brigade has been responsible for egregious offenses including physical intimidation, extortion, robbery, kidnapping, and rape.

4. Nawfal Hammadi al-Sultan: Al-Sultan, a former governor of Ninewa Province, Iraq, was designated on July 18, 2019, for being a current or former government official, or a person acting for or on behalf of such an official, who is responsible for or complicit in, or who has directly or indirectly engaged in, corruption. Following a ferry accident in Ninewa's capital, Mosul, that killed nearly 100 people, Iraq's parliament removed al-Sultan from office. Iraqi authorities have issued an arrest warrant for the former governor, who fled shortly after the accident. In a letter to Members of Parliament after the ferry accident, Prime Minister Adel Abdul Mahdi accused al-Sultan of negligence and dereliction of duty and said there was evidence the former governor was misusing funds and abusing his power.

5. Ahmed al-Jubouri: Al-Jubouri is a former governor of Salah al-Din, Iraq, and current Member of Parliament who was designated on July 18, 2019 for being a current or former government official, or a person acting for or on behalf of such an official, who is responsible for or complicit in, or who has directly or indirectly engaged in, corruption. Al-Jubouri was removed as governor and sentenced to prison in July 2017 upon conviction for misusing authority and federal funds and appropriating land for personal use. Al-Jubouri has since been released. Al-Jubouri has been known to protect his personal interests by accommodating

Iran-backed proxies that operate outside of state control.

6. Kale Kayihura: Kayihura, the former Inspector General of Police (IGP) of the Ugandan Police Force (UPF), was designated on September 13, 2019, for having been a leader or official of an entity that has engaged in, or whose members have engaged in, serious human rights abuse against Ugandan citizens, as well as for his involvement in corruption. As the IGP for the UPF, Kayihura led individuals from the UPF's Flying Squad Unit, which has engaged in the inhumane treatment of detainees. Detainees also reported that after being subjected to the abuse they were offered significant sums of money if they confessed to their involvement in a crime. In addition, Kayihura has engaged in numerous acts of corruption, including using bribery to strengthen his political position within the Government of Uganda, stealing funds intended for official Ugandan government business, and using another government employee to smuggle illicit goods, including drugs, gold, and wildlife, out of Uganda.

7. Ajay, Atul, and Rajesh Gupta; Salim Essa: The Guptas and Essa were designated on October 10, 2019, for their involvement in corruption in South Africa. The members of this network leveraged overpayments on government contracts, bribery, and other corrupt acts to fund political contributions and influence government actions. Ajay was designated for being the leader of an entity that has engaged in, or whose members have engaged in, corruption. Ajay is the family patriarch who formulated the family's corrupt business strategies and controlled its finances.

Atul has materially assisted, sponsored, or provided financial, material, technological support for, or goods or services to or in support of, an entity that has engaged in, or whose members have engaged in, corruption. Atul is widely known to have overseen the Gupta family's outreach to corrupt government officials.

Rajesh has materially assisted, sponsored, or provided financial, material, technological support for, or goods or services to or in support of, an entity that has engaged in, or whose members have engaged in, corruption. Rajesh cultivated important relationships with the sons of powerful South African politicians and led efforts to pursue business and relationships in a South African province where corruption was rampant. Rajesh attempted to use at least one of those relationships to seek undue influence with additional members of a South African political party.

Essa, a business associate of the Gupta family, has materially assisted, sponsored, or provided financial, material, technological support for, or goods or services to or in support of, an entity that has engaged in, or whose members have engaged in, corruption.

8. Ashraf Seed Ahmed Al-Cardinal: Al-Cardinal was designated on October 11, 2019, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, corruption, largely operating within South Sudan. Five companies owned or controlled by Al-Cardinal were also designated: Alcardinal General Trading Limited, Alcardinal General Trading LLC, Al Cardinal Investments Co. LTD, Alcardinal Petroleum Company limited, and NILETEL.

Sudanese businessman Al-Cardinal has been used by a senior South Sudanese government official as an intermediary to deposit and hold a large amount of funds in a country outside of South Sudan. Further, in early 2019, the South Sudanese government made millions of dollars in payments to a company owned by Al-Cardinal; while the official reason was for the payment for food, the money instead went to senior South Sudanese government officials. Other South Sudanese government officials have expressed dissatisfaction with the massive corruption in the South Sudanese government, noting that although large amounts of money were paid to Al-Cardinal for supplies and provisions, government forces never seemed to be adequately supplied. Separately, a company partially owned by Al-Cardinal has been publicly implicated in the importation of amphibious armored vehicles into South Sudan that gave the Government of South Sudan the ability to extend offensives that included violent attacks on innocent civilians.

9. Kur Ajing Ater: Ajing was designated on October 11, 2019, for having materially assisted, sponsored, or provided financial, material, technological support for, or goods or services to or in support of, an entity that has engaged in, or whose members have engaged in, corruption, largely operating within South Sudan. One company owned or controlled by Ajing was also designated: Lou Trading and Investment Company Limited. Ajing is a South Sudanese businessman who has bribed key officials in the Government of South Sudan in order to maintain influence and access to the South Sudanese oil market. Ajing used these bribes to both curry favor with a senior gatekeeper within the Government of South Sudan and to ensure the silence and compliance of a key government officials. According to public media reports, Ajing received millions of dollars in contracts for the South Sudanese military, including one contract that alone exceeds the total amount budgeted for the military's goods and services for the year by a factor of ten.

10. Qais al-Khazali: Al-Khazali was designated on December 6, 2019, for being a foreign person who is a leader or official of an entity, including any government entity, that has engaged in, or whose members have engaged in serious human rights abuse relating to his tenure. Al-Khazali is Secretary General of the Iran-backed Asa'ib Ahl al-Haq (AAH) militia in Iraq. During the late 2019 protests in many cities in Iraq, AAH has opened fire on and killed protestors. Additionally, Qais and Laith al-Khazali had leading roles in a January 2007 attack on an Iraqi government compound in Karbala. The attack killed five U.S. soldiers and wounded three.

11. Laith al-Khazali: Al-Khazali was designated on December 6, 2019, for being a foreign person who is responsible for, complicit in, or has directly or indirectly engaged in serious human rights abuse. Al-Khazali is a leader of AAH. In late 2015, al-Khazali controlled efforts to remove Sunnis from areas of Diyala Province, including killings to drive Sunnis from the area. Additionally, Qais and Laith al-Khazali had leading roles in a January 2007 attack on an Iraqi government compound in Karbala. The attack killed five U.S. soldiers and wounded three.

12. Husayn Falih 'Aziz al-Lami: Al-Lami was designated on December 6, 2019, for being a foreign person who is responsible for, complicit in, or has directly or indirectly engaged in serious human rights abuse. Al-Lami is an Iran-backed militia leader, tasked by other senior militia commanders with suppressing the late 2019 protests in Iraq. Al-Lami directed militia fighters who shot protesters in early October 2019, a time when dozens of protesters were killed.

13. Khamis Farhan Al-Khanjar Al-Issawi: Al-Khanjar was designated on December 6, 2019, for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery. Al-Khanjar is an Iraqi businessman and

millionaire who enjoys significant power on a regional and international level. According to a former senior Iraqi government official, al-Khanjar's influence has been mostly due to his willingness and ability to use his wealth to bribe others. Al-Khanjar has reportedly planned to spend millions of dollars in payments to Iraqi political figures in order to secure their support.

14. Aivars Lembergs: Lembergs was designated on December 9, 2019, for being a foreign person who is a current or foreign government official responsible for or complicit in, or directly or indirectly engaged in, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery. Lembergs has served as the Mayor of Ventspils, Latvia since 1988. From that time, he has been repeatedly accused of money laundering, bribery, and abuse of office. Lembergs controls entities through political parties and corrupt politicians, and systematically exploits those entities and individuals for his own economic gain. Lembergs has used his influence over leadership of political parties to shape government personnel and place certain government officials in positions, as well as to obstruct other government officials from obtaining leadership positions. Additionally, Lembergs has leveraged and corrupted law enforcement officials to protect his interests and subvert politicians whom he otherwise was unable to control.

Additionally, four Latvia-based entities were designated on December 9, 2019, for being owned or controlled by Lembergs: Ventspils Freeport Authority, Ventspils Attistibas Agentura (also known as Ventspils Development Agency), Biznesa Attistibas Asociacija (also known as Business Development Association), and Latvijas Tranzita Biznesa Asociacija (also known as Latvian Transit Business Association).

15. *Try Pheap: Pheap was designated on December 9, 2019, for being a foreign person who is a current or former government official who is responsible for or complicit in, or has directly or indirectly engaged in corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery. Pheap used his vast network inside Cambodia to build a largescale illegal logging consortium that relies on the collusion of Cambodian officials, to include purchasing protection from the government, including military protection, for the movement of his illegal products. The support of these officials makes it difficult for local authorities to take legal action against Pheap.*

Additionally, 11 Cambodia-registered entities were designated on December 9, 2019, for being owned or controlled by Pheap: Try Pheap Group CO., Ltd.; M.D.S. Import Export Co., Ltd.; Try Pheap Dry Port Co., Ltd.; Try Pheap Engineering & Construction Co., Ltd.; Try Pheap Grand Royal Co., Ltd.; Try Pheap Import Export Co., Ltd.; Papa Petroleum Co., Ltd.; Try Pheap Property Co. Ltd.; Try Pheap Travel & Tours Co., Ltd.; M D S Thmorda S E Z Co., Ltd.; and Try Pheap Oyadav S E Z Co., Ltd.

16. Kun Kim: Kim was designated on December 9, 2019, for being a foreign person who is a current or former government official who is responsible for or complicit in, or has directly or indirectly engaged in corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery. Kim was a senior General in the Royal Cambodian Air Force (RCAF) and was instrumental in a development in Koh Kong province and had reaped significant financial benefit from his relationships with a People's Republic of China (PRC) state-owned entity. Kim used RCAF soldiers to intimidate, demolish, and clear-out land sought by the PRC-owned entity. Cambodian elites, like Kim, use their familial networks to create shadow structures to shield ill-gotten assets. In addition to Kim, three members of Kim's family were designated for acting or purporting to act for or on behalf of, directly or indirectly, Kim.

17. King Chandy: Chandy was designated on December 9, 2019, for acting or purporting to act for or on behalf of, directly or indirectly, Kun Kim. Additionally, one entity, K D Rubber Plantation Co., Ltd., is registered in Cambodia and is designated for being owned or controlled by Chandy.

18. Kim Sophary: Sophary was designated on December 9, 2019, for acting or purporting to act for or on behalf of, directly or indirectly, Kun Kim.

Additionally, two entities, Cambo Elite Security Force Co., Ltd. and 7 Makara Phary Co., Ltd., are registered in Cambodia, and are designated for being owned or controlled by Sophary.

19. Kim Phara: Phara was designated on December 9, 2019, for acting or purporting to act for or on behalf of, directly or indirectly, Kun Kim.

Additionally, two entities, Romdoul Capital Pawn Co., Ltd. and Romdoul Development Co., Ltd., are registered in Cambodia and are designated for being owned or controlled by Phara.

20. Goran Andric: Andric was designated on December 9, 2019, for acting or purporting to act for or on behalf of, directly or indirectly, Slobodan Tesic. Andric is one of Tesic's closest associates and has represented Tesic in various international sales, including conducting contract negotiations on Tesic's behalf while Tesic was on the United Nations travel ban list and unable to travel. In working for Tesic, Andric was involved in facilitating arms deals, including an occasion when Andric signed a contract on behalf of the designated entity, Partizan Tech.

In a related action, one entity, Serbia-based Velcom Trade D.O.O. Beograd was designated on December 9, 2019, for being owned or controlled by Andric.

21. Esad Kapidzic: Kapidzic was designated on December 9, 2019, for acting or purporting to act for or on behalf of, directly or indirectly, Tesic. Kapidzic is a director and secretary of Cyprus-based Finrost Limited, as well as a director and representative of Serbia-based Falcon Strategic Solutions D.O.O., two entities concurrently designated for being owned or controlled by, or for acting or purporting to act for or on behalf of, directly or indirectly, Tesic. Finrost Limited received and moved money on behalf of Tesic, and was used by Tesic for a weapons contract with a foreign government in Africa.

Additionally, Falcon Strategic Solutions D.O.O. was established by Tesic immediately following his December 21, 2017 designation to avoid sanctions.

22. Nebojsa Sarenac: Sarenac was designated on December 9, 2019, for acting or purporting to act for or on behalf of, directly or indirectly, Tesic. Sarenac is a managing director of designated entities, Technoglobal and Partizan Tech. Additionally, Sarenac is Tesic's nephew and one of his closest associates.

Additionally, one entity, Melvale Corporation D.O.O. Beograd, which is based in Serbia, was designated on December 9, 2019, for being owned or controlled by Sarenac who is the owner and representative.

23. Zoran Petrovic: Petrovic was designated on December 9, 2019, for acting or purporting to act for or on behalf of, directly or indirectly, Tesic. Petrovic is a managing director and principal of Partizan Tech, an entity designated in December 2017. Petrovic

has negotiated with foreign entities on Tesic's behalf.

24. Nikola Brkic: Brkic was designated on December 9, 2019, for acting or purporting to act for or on behalf of, directly or indirectly, Tesic. Brkic is a principal and legal representative of Partizan Tech.

25. Milan Subotic: Subotic was designated on December 9, 2019, for acting or purporting to act for or on behalf of, directly or indirectly, Tesic. Subotic is the owner, managing director, and representative of Serbia-based Vectura Trans DOO, an entity concurrently designated for being owned or controlled by, or for acting or purporting to act for or on behalf of, directly or indirectly, Tesic. Tesic utilized Vectura Trans to receive an approved license for exports, to complete arms deals, and to finalize weapons contracts with a foreign government. Subotic was also listed as the point of contact for export permits related to designated entity Partizan Tech.

26. Zelimir Petrovic: Petrovic was designated on December 9, 2019, for acting or purporting to act for or on behalf of, directly or indirectly, Tesic. Petrovic is the owner, managing director, and representative of Serbia-based Araneks DOO, an entity concurrently designated for being owned or controlled by, or for acting or purporting to act for or on behalf of, directly or indirectly, Tesic. Araneks was used by Tesic to finalize weapons contracts with a foreign government in Africa, and in dealings with another foreign government.

27. Sreten Cvjetkovic: Cvjetkovic was designated on December 9, 2019, for acting or purporting to act for or on behalf of, directly or indirectly, Tesic. Cvjetkovic is a 50 percent owner and legal representative of Falcon Strategic Solutions D.O.O.

28. Ljobo Maricic: Maricic was designated on December 9, 2019, for acting or purporting to act for or on behalf of, directly or indirectly, Tesic. Maricic is the director of Technoglobal and a former representative of Partizan Arms, the predecessor to Tesic's Partizan Tech.

29. Moonstorm Enterprises LTD: Cyprus-based Moonstorm Enterprises LTD was designated on December 9, 2019, for being owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, Slobodan Tesic, a person designated pursuant E.O. 13818.

30. Tardigrade Limited: Tardigrade was designated on December 9, 2019, for being owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, Slobodan Tesic, a person designated pursuant E.O. 13818. Tesic used Cyprus-based Tardigrade to conduct business in third party countries, particularly Arab and African countries. Tesic has also used his Serbian companies to sign contracts with Tardigrade before selling the goods to a final buyer.

31. Business Diversity Limited: Business Diversity Limited was designated on December 9, 2019, for being owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, Slobodan Tesic, a person designated pursuant E.O. 13818. Tesic established Hong Kong-based Business Diversity Limited in order to conduct business with a European country. Tesic has used Business Diversity Limited in Euro denominated contracts to evade U.S. sanctions.

32. Min Aung Hlaing: Min Aung Hlaing was designated on December 10, 2019, for his role as the Commander-in-Chief of the Burmese security forces, an entity that has engaged in or whose members have engaged in serious human rights abuse under his command. Min Aung Hlaing's military forces were responsible for the brutal security operation that began in August 2017 in Rahkine State and ultimately caused more than 500,000 people to flee to Bangladesh. During this time, members of ethnic minority groups were killed or injured by gunshot, often while fleeing, or by soldiers using large-bladed weapons; others were burned to death in their own houses. There are credible claims of mass-scale rape and other forms of sexual violence committed by soldiers under Min Aung Hlaing's command.

33. Soe Win: Soe Win was designated on December 10, 2019, for his role as the Deputy Commander-in-Chief of the Burmese military forces, an entity that has engaged in or whose members have engaged in serious human rights abuse during his tenure. Soe Win has been heavily involved in directing major operations that occurred in 2017, including the decision to deploy combat divisions to Rakhine State and other regions where serious human rights abuses occurred. Burmese military units responsible for some of the most serious violence, including many instances of sexual violence, reported directly to Soe Win.

34. Than Oo: Than Oo was designated on December 10, 2019, for being a leader of the 99th Light Infantry Division (LID), an entity that has engaged in or whose members have engaged in serious human rights abuse under his command. In 2017, the 99th LID deployed to Rakhine State and, while there, participated in serious human rights abuses alongside the 33rd LID and other security forces. In one operation in Tula Toli, hundreds of men, women, and children were reportedly forced to the nearby riverbank where the 99th LID opened fire, executing many of the men, and forced women and girls to nearby houses where they were sexually assaulted. A number of these women and children were later stabbed and beaten, with the houses set fire while they were inside. The 99th LID was designated pursuant to E.O. 13818 on August 17, 2018, for engaging in serious human rights abuse.

35. Aung Aung: Aung Aung was designated on December 10, 2019, for being a leader of the 33rd LID, an entity that has engaged in or whose members have engaged in serious human rights abuse under his command. The 33rd LID participated in abuses in Rakhine State, including the August 27, 2017 operation in Chut Pyin village. This operation included extrajudicial killings, forced disappearances, and sexual violence, as well as firing on fleeing villagers. More than 100 people were reportedly killed in this one operation alone. The 33rd LID was designated pursuant to E.O. 13818 on August 17, 2018 for engaging in serious human rights abuse.

36. Rao Anwar Khan: Anwar was designated on December 10, 2019, for being a foreign person who is responsible for or complicit in, or having directly or indirectly engaged in serious human rights abuse. During his tenure as the Senior Superintendent of Police in District Malir, Pakistan, Rao Anwar was reportedly responsible for staging numerous fake police encounters in which individuals were killed by police, and was involved in over 190 police encounters that resulted in the deaths of over 400 people, including the brutal murder of Naqeebullah Mehsood. Anwar helped lead a network of police and criminal thugs that were allegedly responsible for extortion, land grabbing, narcotics, and murder.

37. Mahmud al-Warfalli: Al-Warfalli was designated on December 10, 2019, for being a foreign person who is responsible for or complicit in, or having directly or indirectly engaged in, serious human rights abuse. Al-Warfalli served as commander of a militia known as the al-Saiqa Brigade. Since 2016, al-Warfalli has carried out or ordered the killings of 43 unarmed detainees in eight separate incidents. Many of these killings were filmed and published on social media. On January

24, 2018, al-Warfalli was filmed carrying out a mass execution of ten unarmed detainees in Benghazi. After al-Warfalli shot each detainee in the head one by one, al-Warfalli fired freely at the group of ten executed detainees. On July 17, 2017, al-Warfalli ordered the methodical killings of 20 kneeling and unarmed detainees. In several of the incidents, al-Warfalli continued to shoot at the detainees after they were executed.

38. Marian Kocner: Kocner was designated on December 10, 2019, for being a foreign person responsible for or complicit in, or having directly or indirectly engaged in, serious human rights abuse. Kocner threatened Jan Kuciak, a reporter who was investigating Kocner's corrupt dealings. Kuciak's investigative journalism focused on Kocner's ability, through a complicated series of financial transactions, to earn millions of Euros through fraudulent tax returns from Slovakia. Kuciak was also responsible for several exposés on Kocner's corrupt dealings, highlighting Kocner's connections to the police and prosecutors. Kocner also hired former Slovak Intelligence Service members to surveil Kuciak ahead of his eventual murder. Slovak authorities charged Kocner with hiring a hitman who murdered Kuciak and his fiancée, Martina Kusnirova.

Additionally, six entities were designated on December 10, 2019 for being owned or controlled by Kocner: Hotel Holding, S.R.O.; International Investment Development Holding A.S.; International Investment Hotels Holding A.S.; Sprava A Inkaso Pohladavok, S.R.O.; Sprava A Inkaso Zmeniek, S.R.O.; and Tranz-Tel, A.S.

39. Musa Baluku: Baluku was designated on December 10, 2019, for being a foreign person who is the leader of the Allied Defense Forces (ADF), an entity that has engaged in, or whose members have engaged in, serious human rights abuse.

40. Amigo Kibirige: Kibirige was designated on December 10, 2019, for materially assisting, sponsoring, or providing financial, material, or technological support for, or goods and services to or in support of, the ADF, an entity that has engaged in, or whose members have engaged in, serious human rights abuse.

41. Muhammed Lumisa: Lumisa was designated on December 10, 2019, for materially assisting, sponsoring, or providing financial, material, or technological support for, or goods and services to or in support of, the ADF, an entity that has engaged in, or whose members have engaged in, serious human rights abuse.

42. Elias Segujja: Segujja was designated on December 10, 2019, for materially assisting, sponsoring, or providing financial, material, or technological support for, or goods and services to or in support of, the ADF, an entity that has engaged in, or whose members have engaged in, serious human rights abuse.

43. Kayiira Muhammad: Muhammad was designated on December 10, 2019, for materially assisting, sponsoring, or providing financial, material, or technological support for, or goods and services to or in support of, the ADF, an entity that has engaged in, or whose members have engaged in, serious human rights abuse.

44. Amisi Kasadha: Kasadha was designated on December 10, 2019, for materially assisting, sponsoring, or providing financial, material, or technological support for, or goods and services to or in support of, the ADF, an entity that has engaged in, or whose members have engaged in, serious human rights abuse.

45. Abud Stephen Thiongkol: Thiongkol was designated on December 10, 2019, for being a foreign person that is or has been the leader of an entity that has engaged in, serious human rights abuse. Thiongkol has been identified as the commander of the detention facilities where Aggrey Idri (Aggrey), a member of the Sudan People's Liberation Movement—In Opposition (SPLM–IO), and Dong Samuel Luak (Dong), a South Sudanese human rights lawyer, were held prior to their killings.

46. Malual Dhal Muorwel: Muorwel was designated on December 10, 2019, for being a foreign person that is responsible for or complicit in, or has directly or indirectly engaged in, serious human rights abuse. In addition to Muorwel's participation in the killings of Dong and Aggrey, he has been identified as being the commander of forces who detained and assaulted three international monitors in December of 2018.

47. Michael Kuajien: Kuajien was designated on December 10, 2019, for being a foreign person that is responsible for or complicit in, or has directly or indirectly engaged in, serious human rights abuse. Kuajien is one of two people publicly identified as being present in Kenya during, and in having a hand in, the kidnapping of Dong and Aggrey.

48. John Top Lam: Lam was designated on December 10, 2019, for being a foreign person that is responsible for or complicit in, or has directly or indirectly engaged in, serious human rights abuse. Lam is one of two people publicly identified as being present in Kenya during, and in having a hand in, the kidnapping of Dong and Aggrey. Further, Lam is reported to have called a member of Dong's family in order to provide information on Dong's whereabouts in return for a substantial cash payment.

49. Angelo Kuot Garang: Garang was designated on December 10, 2019, for being a foreign person that is responsible for or complicit in, or has directly or indirectly engaged in, serious human rights abuse. Garang has been identified as being involved in the killing of Dong and Aggrey, as well as of other individuals.

Visa Restrictions Imposed

Although no visa restrictions were imposed under the Act during 2019, persons designated pursuant to E.O. 13818 shall be subject to the visa restrictions articulated in section 2, unless an exception applies. Section 2 provides that the entry of persons designated under section 1 of the order is suspended pursuant to Presidential Proclamation 8693. In 2019, the State Department also applied, when appropriate, visa restrictions on foreign persons involved in significant corruption or gross violation of human rights under other authorities, reported to Congress through other means. As appropriate, the Department of State will take additional action to impose visa restrictions on those responsible for certain human rights violations and corruption pursuant to other authorities, including Presidential Proclamations 7750 and 8697, and Section 7031(c) of the FY2019 Department of State, Foreign Operations, and Related Programs, as carried forward by the FY2020 Continuing Appropriations Act, 2020. In addition, section 212(a)(3)(E) of the Immigration and Nationality Act renders aliens ineligible for visas if a consular officer has reason to believe that they participated in acts of genocide, torture or extrajudicial killings.

Efforts To Encourage Governments of Other Countries To Impose Sanctions Similar to Those Authorized by the Act

In 2019, the Administration continued to build on the successful outreach campaign to international partners regarding the expansion of domestic and multilateral anticorruption and human rights sanctions regimes. Following successful outreach in 2018, the United Kingdom and the European Union are progressing in the development of their own human rights sanction's authorities. Canada enacted its authority in October 2017

and since that time, the Administration has worked closely with the Canadian government in pursuing coordinated actions against human rights abusers and corrupt actors. The Administration sought out new partners with which to create truly global authorities to promote accountability for those that abuse human rights and engage in corruption. Throughout this outreach, the Administration has identified champions, partners, and potential spoilers of the objectives established by Congress within the Act. The Departments of State and Treasury have, over the last year, shared information, coordinated messaging, and provided technical assistance to this end.

David Hale,

Under Secretary for Political Affairs, United States Department of State.

[FR Doc. 2019–28231 Filed 12–30–19; 8:45 am]

BILLING CODE 4710–AE–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2019–0836]

Agency Information Collection Activities: Requests for Comments; Clearance of New Approval of Information Collection: Airman Knowledge Test Registration Collection

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 for a new information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 22, 2019. The information collected is necessary to ensure compliance and proper registration of an individual for the necessary knowledge test for the certification or rating pursued by the individual.

DATES: Written comments should be submitted by January 30, 2020.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ryan C. Smith by email at: *Ryan.C.Smith@faa.gov;* Phone: 405–954–6742.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–XXXX.

Title: Airman Knowledge Test Registration Collection.

Form Numbers: There are no forms associated with this collection.

Type of Review: New information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 22, 2019 (84 FR 56520). Individuals pursuing an FAA certificate or rating to operate in the National Airspace System (NAS) must meet the standards established in the FAA regulations specific to the certificate sought by the individual. FAA certification requires that an individual must successfully pass an Airman Knowledge Test as part of the requirements to obtain an FAA certificate or rating. The FAA develops and administers 90 different knowledge tests in many different areas that are required as part of the overall airman certification process.

Airman Knowledge Tests are administered at approved Knowledge Testing Centers by an approved test proctor who is required to administer the appropriate Airman Knowledge Test to the individual pursuing FAA certification. Individuals taking an FAA Airman Knowledge Test must provide the following information to be collected in order to complete the registration process before the administration of the Airman Knowledge Test: Name, FAA Tracking Number (FTN), physical address, Date of Birth, email address, photo identification, phone number, test authorization (credentials of the individual such as an instructor endorsement), and previous number of test attempts.

The information provided by the individual is collected and stored electronically in the application used for test registration and delivery. This information is used to determine the identify and eligibility of the individual for compliance of FAA certification requirements.

Respondents: 150,000 annually.

Frequency: n/a.

Estimated Average Burden per Response: 2 minutes.

Estimated Total Annual Burden: 5,000 hours annually; 150,000 respondents × 2 minutes each = 300,000 minutes; 300,000 minutes/60 minutes in an hour = 5,000 hours annually.

Issued in Oklahoma City, OK, on October 17, 2019.

Ryan C. Smith,

Airman Knowledge Testing Program Manager, Airman Testing Standards Branch (AFS–630).

[FR Doc. 2019–28241 Filed 12–30–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway Project in Rhode Island

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of limitation on claims for judicial review of actions by FHWA.

SUMMARY: This notice announces actions taken by the FHWA that are final pursuant to the statute. The actions relate to a proposed highway project, I–95 Northbound Providence Viaduct Replacement in the City of Providence in the State of Rhode Island, FHWA Project Number IM–0953–105, Rhode Island Department of Transportation (RIDOT) Contract Number 2008–EB–001B.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(1)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before May 29, 2020. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such

claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For FHWA: Mr. Carlos E. Padilla-Fresse, MSCE, Program Delivery Supervisor, Federal Highway Administration Rhode Island Division, 380 Westminster Mall, Suite 601, Providence, Rhode Island 02903: Telephone: (401) 528–4577; email: *Carlos.Padilla@dot.gov.* The FHWA Rhode Island Division Office's normal business hours are 8:00 a.m. to 4:30 p.m. (Eastern Standard Time), Monday through Friday, except Federal Holidays. For RIDOT: Mr. David Fish, P.E., Administrator of Project Management, Rhode Island Department of Transportation, Two Capitol Hill, Providence, Rhode Island 02903–1124, telephone: (401) 222–2023, email: *david.fish@dot.ri.gov.* RIDOT normal business hours are 8:00 a.m. to 4:30 p.m. (Eastern Standard Time), Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA has taken final agency actions subject to 23 U.S.C. 139(1)(1) by issuing a Finding of No Significant Impact (FONSI) for the following highway project in the State of Rhode Island: I–95 Northbound Providence Viaduct Replacement in the City of Providence. RIDOT proposes the replacement of the I–95 Northbound Providence Viaduct and its associated ramps and structures with new structures designed to alleviate traffic congestion on I–95 through downtown Providence.

The actions by the FHWA, and the laws under which such actions were taken, are described in the Environmental Assessment (EA) for the project approved on July 26, 2019, and a Finding of No Significant Impact (FONSI) issued on December 2, 2019, and in other documents in the project records. The EA, FONSI, and other project records are available by contacting the FHWA or the Rhode Island Department of Transportation at the addresses provided above. The EA and FONSI can be viewed and downloaded from the project website at *http://www.dot.ri.gov/Providence Viaduct.*

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4370h]; Federal-Aid Highway Act [Title 23] and associated regulations [CFR part 23].

2. Hazardous Materials: Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986 [Pub. L. 99–499]; Resource Conservation and Recovery Act [42 U.S.C. 6901–6992(k)]; Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901, *et seq.*).

3. Air: Clean Air Act, [42 U.S.C. 7401–7671(q)] (transportation conformity).

4. Noise: 23 U.S.C. 109(i) (Pub. L. 91–605) (Pub. L. 93–87).

5. Wildlife: Endangered Species Act [16 U.S.C. 1531–1544]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(e)]; Migratory Bird Treaty Act [16 U.S.C. 703–712]. Plant Protection Act [7 U.S.C. 7701 *et seq.*].

6. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, [54 U.S.C. 306108]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–470(mm)]; Archeological and Historic Preservation Act [16 U.S.C. 469–469 c–2]; Native American Grave Protection and Repatriation Act [25 U.S.C. 3001–3013].

7. Land: Section 4(f) of The Department of Transportation Act: [49 U.S.C. 303; 23 U.S.C. 138] Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

8. Wetlands and Water Resources: Clean Water Act [33 U.S.C 1251–1387 (Sections 319, 401, and 404)); Flood Disaster Protection Act (42 U.S.C. 4012a 4106).

9. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11988 Floodplain Management; E.O. 13175 Consultation and Coordination with Indian Tribal Governments.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(/)(1),

Issued on: December 11, 2019.

Carlos C. Machado,

FHWA Rhode Island Division Administrator, Providence, Rhode Island.

[FR Doc. 2019–27789 Filed 12–30–19; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final State Agency Actions Under 23 U.S.C. 327 on State Route 30, SR 303L to SR 202L in Maricopa County, AZ

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: The FHWA, on behalf of the Arizona Department of Transportation (ADOT), is issuing this notice to announce actions taken by ADOT and other relevant Federal agencies that are final. The actions relate to the Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for the proposed project State Route (SR) 30, SR 303L to SR 202L in Maricopa County, AZ. The actions grant licenses, permits, and approvals for the project.

DATES: By this notice, FHWA, on behalf of ADOT, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions with authority on the highway project will be barred unless the claim is filed on or before May 29, 2020. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Olmsted, NEPA Assignment Manager, Environment Planning, Arizona Department of Transportation, 1611 W Jackson, MD EM02, Phoenix, Arizona 85007; telephone: (602) 712–6421, fax: (602) 712–3066, email: *solmsted@azdot.gov.* The Arizona Department of Transportation normal business hours are 8:00 a.m. to 4:30 p.m. (Mountain Standard Time).

You may also contact: Mr. Paul O'Brien, Environmental Planning Administrator, Arizona Department of Transportation, 1611 W Jackson, MD EM02, Phoenix, Arizona 85007; telephone: (602) 712–8669, fax: (602) 712–3066, email: *POBrien@azdot.gov.*

SUPPLEMENTARY INFORMATION: Effective April 16, 2019, FHWA assigned and ADOT assumed environmental responsibilities for this project pursuant to 23 U.S.C. 327 and a Memorandum of Understanding executed by FHWA and ADOT.

Notice is hereby given that ADOT and other relevant Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following project in the State of

Arizona: State Route 30, SR 303L to SR 202L. The actions by ADOT and other relevant Federal agencies and the laws under which such actions were taken, are described in the Draft EA approved on April 16, 2019, Final EA approved within the Finding of No Significant Impact issued on November 6, 2019, and in other documents in the administrative record. The FEA, FONSI, and other project records are available by contacting ADOT at the addresses provided above. Project decision documents are also available online at: *https://azdot.gov/planning/transportation-studies/sr-30-loop-303-loop-202-study/documents-sr-30-loop-303-loop-202.*

This notice applies to all ADOT and other relevant Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].
2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].
3. *Land:* Section 4(f) of the U.S. Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].
4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712].
5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].
6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].
7. *Wetlands and Water Resources:* Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)–300(j)(6)]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287]; Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].
8. *Water:* Clean Water Act 33 U.S.C. 1251–1387.
9. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: December 11, 2019.

Karla S. Petty,

Arizona Division Administrator, Phoenix, Arizona.

[FR Doc. 2019–27790 Filed 12–30–19; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2019–0167]

Rural Opportunities To Use Transportation for Economic Success: Request for Information

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Request for information (RFI); extension of comment period.

SUMMARY: The Department of Transportation (DOT) extends the comment period for its November 27, 2019 request for information (RFI) on unmet transportation infrastructure needs in rural transportation, barriers that rural communities face in addressing these needs, stakeholders' experiences with applying to and using DOT discretionary grant and credit programs, and opportunities for DOT to improve its services and technical assistance to rural communities in relation to these grant and credit programs. The Department believes it is appropriate to extend the comment period to provide interested parties additional time to submit their responses to the RFI. Therefore, the Department extends the deadline for the submission of comments until January 27, 2020.

DATES: The comment period for the RFI published November 27, 2019, at 84 FR 65459, is extended to January 27, 2020. DOT will consider comments filed after this date to the extent practicable.

ADDRESSES: Comments should refer to the docket number above and be submitted by one of the following methods:

- *Electronic Submission:* Go to *http://www.regulations.gov.* Search by using the docket number (provided above). Follow the instructions for submitting comments on the electronic docket site.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal Holidays.

Instructions: All submissions must include the agency name and docket numbers.

Note: All comments received, including any personal information, will be posted without change to the docket and will be accessible to the public at *http://www.regulations.gov.* You should not include information in your comment that you do not want to be made public. Input submitted online via *www.regulations.gov* is not immediately posted to the site. It may take several business days before your submission is posted.

FOR FURTHER INFORMATION CONTACT: Visit *http://www.transportation.gov/rural,* or contact Robert Hyman at *rural@dot.gov* or 202–366–5843. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Background

The November RFI requested information directly from the public and other stakeholders to inform the development and implementation of the Rural Opportunities to Use Transportation for Economic Success (ROUTES) initiative. DOT seeks comments that illustrate rural communities' needs and experiences with transportation infrastructure, including the condition of that infrastructure, its effect on safety, and how its use affects the community. This includes comments and data pertaining to current unmet needs in rural transportation, barriers rural communities face in addressing these transportation needs, stakeholders' experiences with applying to and using DOT discretionary grant and credit programs, and opportunities for the DOT to improve its services and technical assistance to rural communities in relation to these grant and credit programs, within the limits of statutory requirements.

The comment period for the RFI was set at 30 days, ending on December 27, 2019. In consideration of holiday schedules that may have impacted commenter's ability to prepare comments during this period and in the interest of receiving a greater number of comments, DOT extends the public comment period until January 27, 2020.

Public Comment

DOT invites comments by all those interested in the Rural Opportunities to Use Transportation for Economic Success (ROUTES) initiative. Comments may be submitted and viewed at Docket Number DOT–OST–2019–0167 at *http://www.regulations.gov,* or at the address given above under **ADDRESSES**. Comments must be received on or before January 27, 2020 to receive full consideration by DOT. DOT will consider comments filed after this date to the extent practicable. After that date, comments will continue to be available for viewing by the public.

Issued in Washington, DC, on December 23, 2019, under authority delegated at 49 U.S.C. 1.25a.

Joel Szabat,

Acting Under Secretary of Transportation for Policy.

[FR Doc. 2019–28250 Filed 12–30–19; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Announcement of Requirements; RAISE (Recognizing Aviation and Aerospace Innovation in Science and Engineering) Awards

AGENCY: Office of the Secretary of Transportation, U.S. Department of Transportation.

ACTION: Notice of the announcement of requirements for the RAISE (Recognizing Aviation and Aerospace Innovation in Science and Engineering) Awards.

Authority: 15 U.S.C. 3719 (America COMPETES Act).

Award Approving Official: Elaine L. Chao, Secretary of Transportation.

SUMMARY: Pursuant to a recommendation by the Future of Aviation Advisory Committee, the Secretary of Transportation, through the Federal Aviation Administration (FAA), is announcing the sixth annual competition to recognize students with the ability to demonstrate unique and innovative thinking in aerospace science and engineering. This competition includes a high school division and both a graduate and undergraduate university division. The Department of Transportation (DOT) intends to use this competition to incentivize students at high schools and universities to think creatively in developing innovative solutions to aviation and aerospace challenges, and to share their innovations with the broader community.

DATES: Submissions accepted through noon eastern time (ET) on Wednesday, April 8, 2020. Expression of interest in participating in the competition should be submitted to the FAA by noon ET on Friday, February 14.

FOR FURTHER INFORMATION CONTACT:

• Patricia Watts, Ph.D., Federal Aviation Administration, *patricia.watts@faa.gov*

• James Brough, Federal Aviation Administration, *james.brough@faa.gov*

SUPPLEMENTARY INFORMATION: *Subject of Competition:* The Secretary's RAISE Award competition will recognize innovative scientific and engineering achievements that will have a significant impact on the future of aerospace or aviation. On behalf of the Secretary, the Federal Aviation Administration (FAA) will accept student submissions and will invite subject-matter-experts to conduct an evaluation of all qualifying entries.

Eligibility: To be eligible to participate in the Secretary's RAISE Award competition, students must be citizens of the United States or permanent residents. For the high school division, the students must have been enrolled in at least one semester (or quarterly equivalent) at a U.S. high school (or equivalent approved home school program) in 2019. For the university division, the student must have been enrolled in a U.S.-based college or university for at least one semester (or quarterly equivalent) during 2019. Students may participate and be recognized as individuals or in teams. Each member of a team must meet the eligibility criteria. An individual may join more than one team. There is no charge to enter the competition.

The following additional rules apply:

1. Candidates shall submit a project in the competition under the rules promulgated by the Department of Transportation (DOT);

2. Candidates shall agree to execute indemnifications and waivers of claims against the Federal government as provided in this Notice;

3. Candidates may not be a Federal entity or Federal employee acting within the scope of employment;

4. Candidates may not be an employee of the DOT, including but not limited to the FAA;

5. Candidates shall not be deemed ineligible because an individual used Federal facilities or consulted with Federal employees during a competition, if the facilities and employees are made available to all individuals participating in the competition on an equitable basis;

6. The competition is subject to all applicable Federal laws and regulations. Participation constitutes the Candidates' full and unconditional agreement to these rules and to the Secretary's decisions, which are final and binding in all matters related to this competition;

7. Submissions which in the Secretary's sole discretion are determined to be substantially similar to a prior submitted entry may be disqualified;

8. Submissions must be original, must be the work of the Candidates, and must not violate the rights of other parties. All submissions remain the property of the applicants. Each Candidate represents and warrants that s/he, or the team, is the sole author and owner of the submission, that the submission is wholly original, that it does not infringe any copyright or any other rights of any third party of which the Candidate is aware, and, if submitted in electronic form, is free of malware;

9. By submitting an entry, contestants and entrants agree to assume any and all risks and waive any claims against the Federal Government and its related entities (except in the case of willful misconduct) for any injury, death, damage, or loss of property, revenue or profits, whether direct, indirect, or consequential, arising from their participation in this contest, whether the injury, death, damage, or loss arises through negligence of otherwise;

10. The Secretary and the Secretary's designees have the right to request access to supporting materials from the Candidates;

11. The submissions cannot have been submitted in the same or substantially similar form in any previous Federally-sponsored promotion or Federally-sponsored contest, of any kind;

12. Each Candidate grants to the FAA, the DOT, as well as other Federal agencies with which it partners, the right to use names, likeness, application materials, photographs, voices, opinions, and/or hometown and state for the Department's promotional purposes in any media, in perpetuity, worldwide, without further payment or consideration; and

13. The FAA Administrator collects personal information from Candidates when they enter this competition. The information collected is subject to the Challenge Post privacy policy located at *http://www.challengepost.com/privacy.*

Expression of Interest: Due by Friday, February 14, 2020.

Students are strongly encouraged to send brief expressions of interest to the FAA prior to submitting entries. The expressions of interest should be received by noon ET on Friday,

February 14. Send the following information to *Patricia.Watts@faa.gov:*

(1) Names of sponsoring faculty and candidates;

(2) name of educational institutions with which candidates are affiliated;

(3) telephone and email addresses for nominating official and each candidate;

(4) a title and synopsis of the concept, limited to no more than two pages, providing a high-level overview of the proposed project and impact of the related research.

(5) a completed entry form and photo of students entering the competition will be required of finalists.

SUBMISSION REQUIREMENTS:

Complete submission packages are due by noon ET on Wednesday, April 8 and shall consist of the following elements:

1. Letter(s)

a. Cover Letter—Attach a formal nomination from a teacher, advisor, faculty member, or other as appropriate. Provide evidence of technical merit and the following selection criteria based upon teacher (parent or legal guardian in the case of home schooled applicants).

Include assessment of the submitted proposal describing the conducted research, written paper(s), results, and/or reports as well as professionalism and leadership qualities of the student(s) participating.

b. Additional Supporting Letters—no limit.

i. Technical Merit of the Concept—and additional selection criteria

ii. Professionalism and Leadership

Evidence of the professionalism and leadership should be in the form of, but not limited to:

(a) Membership and offices held in various groups

(b) Presentations made to various groups, meetings, and at symposia

(c) Leadership in student professional activities

(d) Community outreach activities

2. Summary Statement—An overall summary of the innovation, not to exceed one page. Include the title of the project, a one paragraph synopsis, and a statement of the potential innovative impact the concept will have on the field of aviation or aerospace;

3. Project Description—A full description of the project, not to exceed 10 pages.

4. Transcript—A copy of each student's academic transcript or certified grade report (as applicable);

5. Additional Materials—No limit. Photographs and a copy of the paper(s) and related materials describing the innovative concept written by the student(s) being nominated may be included.

The FAA may request additional information, including supporting documentation, more detailed contact information, releases of liability, and statements of authenticity to guarantee the originality of the work. Failure to respond in a timely manner will result in disqualification.

Electronic entries may be transmitted by email to *Patricia.Watts@FAA.gov*. The subject line should indicate *Secretary's RAISE Entry—Title of Research Project.* Hard copies should be forwarded to: Patricia Watts, Ph.D., ANG E2, Secretary's RAISE Entry, FAA William J. Hughes Technical Center, L–28, Atlantic City International Airport, NJ 08405.

The timeliness of submissions will be determined by the postmark (if sent in hard copy) or time stamp if emailed. Competition administrators assume no responsibility for lost or untimely submissions for any reason.

Award:

The selectee is expected to be announced in 2020. A trophy with the student's name and date of award will be displayed at the Department of Transportation and a display copy of the trophy will be sent to the student's school/college/university. Each selected student will receive a plaque. At the option of the FAA Administrator, the FAA will pay for invitational travel expenses to Washington, DC for up to four representatives of the winning team(s) to attend an awards ceremony and for students who may also be invited to present their project(s) to FAA and DOT officials.

Selections Will Be Based Upon the Following

The FAA will initially review entries to determine eligibility and will convene a panel of experts who may represent academia, government (officials including those within the FAA and the DOT), and representatives of the private sector. The panel members will judge the entries and rank order eligible submissions. The FAA Administrator will review the most highly qualified entries and will make recommendations to the Secretary of Transportation. The Secretary will make the final selection(s). The Department reserves the right to not award the prize in either or both the high school category or the university category if the selecting officials believe that no submission demonstrates sufficient innovative scientific and engineering potential and/or achievements in its category. Panel members will judge entries against other submissions from the same division or category based on the following selection criteria.

Technical Merit:

- Has the submission presented a clear understanding of the associated problems?
- Has the submission developed a logical and workable solution and approach to solving the problem/s?
- What are the most significant aspects of this concept?
- Has the submission clearly described the breadth of impact of the innovation?

Additional Criteria:

- Originality
  - Is this concept new or a variation of an existing idea, and in what way(s)?
  - How is this work unique?
  - Was the concept developed independently or in cooperation with others?
- Impact and Applicability
  - Can this effort be scaled?
  - Is this work specific to one region, various regions, or to the entire nation?
  - To what extent does this project have the potential to make a significant impact and/or contribution to the future of the aviation and aerospace environment?
- Practicality and Measurability
  - Who directly benefits from this work?
  - Can this program or activity be implemented in a practical fashion?
  - What are the costs anticipated to be incurred and saved by executing this concept?
  - How has this individual/group measured the impact and improvements on the aviation environment?

All factors are important and will be given consideration; however, the advisory panel will give the ''technical merit'' factor the most weight in the screening process. The Secretary of Transportation retains sole discretion to select the winning entrant.

Additional Information:

- Federal grantees may not use Federal funds to develop COMPETES Act challenge applications.
- Federal contractors may not use Federal funds from a contract to develop COMPETES Act challenge applications or to fund efforts in support of a COMPETES Act challenge submission.

Issued on: December 19, 2019.

Shelley Yak,

Director, William J. Hughes Technical Center.

[FR Doc. 2019–28187 Filed 12–30–19; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Tax Exempt Forms and Schedules

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before January 30, 2020 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW, Suite 8100, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Spencer W. Clark by emailing *PRA@treasury.gov,* calling (202) 927–5331, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Internal Revenue Service (IRS)

Title: Tax Exempt Forms and Schedules.

OMB Control Number: 1545–0047.

Type of Review: Revision of a currently approved collection.

Description: These forms and schedules are needed to determine that IRC section 501(a) tax-exempt organizations fulfill the operating conditions within the limitations of their tax exemption. The data is also used for general statistical purposes. These forms are used by Tax Exempt organizations to specify their items of gross income, receipts and disbursements.

Form: 990, 990–BL, 990–EZ, 990–N, 990–PF, 990–T, 990–W, 990 SCH E, 990 SCH I, 990 SCH M, 990 SCH D, 990 SCH F, 990 SCH H, 990 SCH J, 990 SCH K, 990 SCH R, 990/990–EZ SCH A, 990/990–EZ SCH C, 990/990–EZ SCH G, 990/990–EZ SCH L, 990/990–EZ SCH N, 990/990–EZ SCH O, 990/990–EZ/990–PF SCH B, 1023, 1023–EZ, 1023-Interactive, 1024, 1024–A, 1028, 1120–POL, 4720, 5578, 5884–C, 6069, 6497, 8038, 8038–B, 8038–CP, 8038–G, 8038–GC, 8038–R, 8038–T, 8038–TC, 8282, 8328, 8330, 8453–E.O., 8453–X, 8718, 8868, 8870, 8871, 8872, 8879–E.O., 8886–T, 8899 and all other related forms, schedules and attachments.

Affected Public: Not-for-profit Institutions.

Estimated Number of Respondents: 1,413,200.

Frequency of Response: Annually.

Total Estimated Time: 50.5 million hours.

Estimated Time per Respondent: 35.7 hours.

Total Estimated Out-of-Pocket Costs: $1.30 billion.

Estimated Out-of-Pocket Cost per Respondent: $918.

Total Estimated Monetized Labor Burden: $3.59 billion.

Estimated Total Monetized Labor Burden per Respondent: $2,543.

Note: Amounts below are for FY2018. Reported time and cost burdens are national averages and do not necessarily reflect a ''typical'' case. Most taxpayers experience lower than average burden, with taxpayer burden varying considerably by taxpayer type. Detail may not add due to rounding.

TABLE 1—FISCAL YEAR 2018 FORM 990 SERIES TAX COMPLIANCE COST ESTIMATES

	Type of return				
	Form 990	Form 990–EZ	Form 990–PF	Form 990–T	Form 990–N
Projections of the Number of Returns to be Filed with IRS	322,900	252,900	113,100	124,500	599,800
Estimates Average Total Time (Hours)	85	45	47	40	2
Estimated Average Total Out-of-Pocket Costs	$2,400	$500	$1,800	$1,300	$10
Estimates Total Time (Hours)	27,370,000	11,440,000	5,280,000	5,040,000	1,320,000
Estimated Total Out-of-Pocket Costs	$787,700,000	$128,000,000	$208,500,000	$167,600,000	$5,500,000

Authority: 44 U.S.C. 3501 *et seq.*

Dated: December 26, 2019.

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2019–28274 Filed 12–30–19; 8:45 am]

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FEDERAL REGISTER

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Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 1, 47, 48, et al.

Remote Identification of Unmanned Aircraft Systems; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 47, 48, 89, 91, and 107

[Docket No.: FAA–2019–1100; Notice No. 20–01]

RIN 2120–AL31

Remote Identification of Unmanned Aircraft Systems

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: This action would require the remote identification of unmanned aircraft systems. The remote identification of unmanned aircraft systems in the airspace of the United States would address safety, national security, and law enforcement concerns regarding the further integration of these aircraft into the airspace of the United States while also enabling greater operational capabilities.

DATES: Send comments on or before March 2, 2020.

ADDRESSES: Send comments identified by docket number FAA–2019–1100 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ben Walsh, Flight Technologies and Procedures Division, Federal Aviation Administration, 470 L'Enfant Plaza SW, Suite 4102, Washington, DC 20024; telephone 1–844–FLY–MY–UA; email: *UASRemoteID@faa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary
A. Introduction and Overview
B. Purpose of the Regulatory Action
C. Summary of the Proposed Rule
D. Summary of Costs and Benefits
E. Structure of This Proposed Rule
II. Authority for This Rulemaking
III. Integration of UAS Into the Airspace of the United States
IV. Need for Remote Identification of UAS Operating in the Airspace of the United States
A. Maintaining the Safety and Efficiency of the Airspace of the United States
B. Unmanned Aircraft Systems Traffic Management (UTM)
C. Facilitating Beyond Visual Line of Sight Operations
D. National Security and Law Enforcement Efforts
V. Related International Activities
VI. Aviation Rulemaking Committee
A. ARC Recommendations Final Report
B. FAA Response to ARC Report
VII. Terms Used in this Proposed Rule
VIII. Applicability of Remote Identification Requirements
IX. Changes to Registration Requirements
A. Registration Under Part 47
B. Registration Under Part 48
C. Issues With the Current Registration Requirements and Proposed Changes
D. Proposed Changes to the Registration Requirements To Require a Serial Number and Telephone Number as Part of the Registration Process
E. Request for Comments Regarding Serial Number Requirements
F. Serial Number Marking
X. Operating Requirements for Remote Identification
A. Requirement To Broadcast or Transmit
B. Prohibition from Using ADS–B To Satisfy Remote Identification Requirements
C. Internet Availability and Transmission to a Remote ID USS
D. In-flight Loss of Connectivity with a Remote ID USS or Loss of Functionality
E. Valid Declaration of Compliance
F. Foreign Registered Civil Unmanned Aircraft Operated in the United States
G. Example Operating Scenarios
XI. Law Enforcement Access to Remote Identification and Registration Information
XII. Means of Compliance
A. Introduction
B. Applicability
C. Remote Identification Message Elements
D. Minimum Performance Requirements
E. Other Performance Requirements Considered
F. Submission and FAA Acceptance of Means of Compliance
G. Rescission of a Means of Compliance
H. Record Retention Requirements
XIII. Design and Production Requirements
A. Applicability and Summary of Requirements
B. Requirement To Issue Serial Numbers
C. Requirement To Label UAS
D. Requirement for a UAS To Be Designed and Produced Using an FAA-Accepted Means of Compliance
E. Requirement To Submit a Declaration of Compliance
F. Accountability
XIV. Remote Identification UAS Service Suppliers
A. UAS Service Suppliers (USS)
B. Remote ID USS
C. Data Privacy and Information Security
XV. FAA-Recognized Identification Areas
A. Eligibility
B. Process to Request an FAA-Recognized Identification Area
C. Amendment
D. Duration of an FAA-Recognized Identification Area
E. Expiration and Termination
F. Petition To Reconsider the FAA's Decision To Terminate and FAA-Recognized Identification Area
XVI. Use of ADS–B Out and Transponders
XVII. Proposed Effective and Compliance Dates
XVIII. Proposed Guidance Documents
XIX. Regulatory Notices and Analyses
A. Regulatory Evaluation
B. Regulatory Flexibility Determination
C. International Trade Impact Assessment
D. Unfunded Mandates Assessment
E. Paperwork Reduction Act
F. International Compatibility and Cooperation
G. Environmental Analysis
XX. Executive Order Determinations
A. Executive Order 13132, Federalism
B. Executive Order 13211, Regulations that Significantly Affect Energy Supply, Distribution, or Use
C. Executive Order 13609, Promoting International Regulatory Cooperation
XXI. Tribal Considerations
XXII. Privacy
XXIII. Additional Information
A. Comments Invited
B. Confidential Business Information
C. Availability of Rulemaking Documents
D. Small Business Regulatory Enforcement Fairness Act

List of Abbreviations Frequently Used in This Document

AC—Advisory Circular
ADS–B—Automatic Dependent Surveillance-Broadcast
ARC—Aviation Rulemaking Committee
ATC—Air traffic control
BVLOS—Beyond visual line of sight
DOT—U.S. Department of Transportation
FAA—Federal Aviation Administration
GPS—Global Positioning System
ICAO—International Civil Aviation Organization
IFR—Instrument flight rules
MOA—Memorandum of Agreement
OMB—Office of Management and Budget
UAS—Unmanned aircraft system
USS—UAS service supplier

UTM—Unmanned aircraft systems traffic management

I. Executive Summary

A. Introduction and Overview

This proposed rule would establish requirements for the remote identification of unmanned aircraft systems (UAS) [1] operated in the airspace of the United States. Remote identification (or Remote ID) is the ability of an unmanned aircraft in flight to provide certain identification and location information that people on the ground and other airspace users can receive. This is an important building block in the unmanned traffic management ecosystem. For example, the ability to identify and locate UAS operating in the airspace of the United States provides additional situational awareness to manned and unmanned aircraft. This will become even more important as the number of UAS operations in all classes of airspace increases. In addition, the ability to identify and locate UAS provides critical information to law enforcement and other officials charged with ensuring public safety. While remote identification alone will not enable routine expanded operations such as operations over people or beyond visual line of sight, it is a critical element for building unmanned traffic management capabilities. The FAA envisions that the remote identification network will form the foundation for the development of other technologies that can enable expanded operations.

Full implementation of remote identification relies on three interdependent parts that are being developed concurrently. The first is this proposed rule, which establishes operating requirements for UAS operators and performance-based design and production standards for producers of UAS. The second is a network of Remote ID UAS Service Suppliers (Remote ID USS) that would collect the identification and location in real-time from in-flight UAS. The Remote ID USS would perform this service under contract with the FAA, based on the same model the FAA currently uses for the Low Altitude Authorization and Notification Capability (LAANC).[2] The third part of the remote identification ecosystem is the collection of technical requirements that standards-setting organizations will develop to meet the performance-based design and production requirements in this proposed rule.

All UAS operating in the airspace of the United States, with very few exceptions, would be subject to the requirements of this rule. All UAS operators would be required to comply regardless of whether they conduct recreational or commercial operations, except those flying UAS that are not otherwise required to be registered under the FAA's existing rules. All UAS produced for operation in the airspace of the United States would have to comply with the design and production requirements established in this proposal with exceptions for amateur-built UAS, UAS of the United States government, and unmanned aircraft that weigh less than 0.55 pounds.

This proposal establishes design and production requirements for two categories of remote identification: Standard remote identification UAS and limited remote identification UAS. Standard remote identification UAS would be required to broadcast identification and location information directly from the unmanned aircraft and simultaneously transmit that same information to a Remote ID USS through an internet connection. Limited remote identification UAS would be required to transmit information through the internet only, with no broadcast requirements; however, the unmanned aircraft would be designed to operate no more than 400 feet from the control station. Under this proposal, the vast majority of UAS would be required to comply with one of these two categories of remote identification. For those limited exceptions, which include certain amateur-built UAS and UAS manufactured prior to the compliance date, operators flying UAS without remote identification capabilities would be permitted to fly only at certain specific geographic areas established under this rule specifically to accommodate them.

This proposal envisions that within three years of the effective date of this rule, all UAS operating in the airspace of the United States will be compliant with the remote identification requirements. No UAS could be produced for operation in the United States after two years and no UAS could be operated after three years except in accordance with the requirements of this proposal. Details on the requirements and their applicability are in the sections that follow.

B. Purpose of the Regulatory Action

The FAA is integrating unmanned aircraft systems (UAS) operations into the airspace of the United States through a phased, incremental, and risk-based approach.[3]

On June 28, 2016, the FAA achieved a major step towards UAS integration when it published the final rule for Operation and Certification of Small Unmanned Aircraft Systems.[4] This was one of multiple UAS-related regulatory actions taken by the FAA to enable the safe integration of UAS into the airspace of the United States. As technology progresses and the utility of UAS increases, the FAA anticipates a need for further rulemaking to continue to foster the safe, secure, and efficient use of the airspace of the United States. The FAA believes that the next step in the regulatory process is to develop regulatory requirements that enable the remote identification of UAS operating in the airspace of the United States.

The remote identification of UAS is necessary to ensure public safety and the safety and efficiency of the airspace of the United States. The remote identification framework would provide UAS-specific data, which could be used in tandem with new technologies and infrastructure to facilitate future, more advanced operational capabilities (such as detect-and-avoid and aircraft-to-aircraft communications that support beyond visual line of sight operations) and to develop the necessary elements for comprehensive UAS traffic management (UTM). Furthermore, remote identification of UAS would provide airspace awareness to the FAA, national security agencies, and law enforcement entities. This information could be used to distinguish compliant airspace users from those potentially posing a safety or security risk.

Current rules for registration and marking of unmanned aircraft facilitate the identification of the owners of unmanned aircraft, but normally only upon physical examination of the aircraft. Existing electronic surveillance technologies like transponders and Automatic Dependent Surveillance-

[1] The FAA does not use the terms unmanned aircraft system and unmanned aircraft interchangeably. The FAA uses the term unmanned aircraft as defined in 14 CFR 1.1 to refer specifically to the unmanned aircraft itself. The FAA uses the term unmanned aircraft system to refer to both the unmanned aircraft and any communication links and components that control the unmanned aircraft. As explained in section VII of this proposed rule, the FAA is proposing to add the definition of unmanned aircraft system to part 1 of 14 CFR.

[2] For more information on LAANC, consult *https://www.faa.gov/uas/programs_partnerships/data_exchange/*. On December 20, 2018, the FAA issued a request for information (RFI) seeking data exchange strategies and demonstrations for potential Remote ID USS. For more information on the RFI, consult *https://faaco.faa.gov/index.cfm/announcement/view/32514*.

[3] Consult *https://www.faa.gov/uas* for additional information regarding UAS operations.

[4] 81 FR 42064.

Broadcast (ADS–B), in addition to radio communications with air traffic control (ATC), were all considered as potential solutions for the remote identification of UAS but were determined to be unsuitable due to the lack of infrastructure for these technologies at lower altitudes and the potential saturation of available radio frequency spectrum. The FAA proposes to address the identification issues associated with UAS by requiring the use of new services and technology to enable the remote identification of UAS.

The proposed remote identification requirements are consistent with the FAA's safety mission of overseeing and promoting safety in air commerce and national security as well as promoting the safe and efficient use of the navigable airspace. The newly-available information would serve the public interest of enhancing safety, efficiency, and security in air commerce by creating situational awareness of all UAS flying in the airspace of the United States, which would allow additional and more complex UAS operations to take place. Remote identification would also strengthen the FAA's oversight of UAS operations and support efforts of law enforcement and national security agencies to address and mitigate disruptive behavior and hazards, which may threaten the safety and security of the airspace of the United States, other UAS, manned aviation, and persons and property on the ground. Remote identification information provided in near real-time would also assist Federal security partners in threat discrimination—allowing them to identify an operator and make an informed decision regarding the need to take actions to mitigate a perceived security or safety risk. The proposed rule would enhance the FAA's ability to monitor compliance with applicable regulations; would contribute to the FAA's ability to undertake compliance, enforcement, and educational actions required to mitigate safety risks; and would advance the safe integration of UAS into the airspace of the United States.

C. Summary of the Proposed Rule

This proposed rule provides a framework for remote identification of all UAS operating in the airspace of the United States. The rule would facilitate the collection and storage of certain data such as identity, location, and altitude regarding an unmanned aircraft and its control station.

The FAA is proposing to tie the remote identification requirements to the registration of unmanned aircraft because the FAA and law enforcement agencies have a need to correlate remote identification and registration data. The proposed rule would therefore impose operating requirements on persons operating unmanned aircraft registered or required to be registered under title 14, Code of Federal Regulations (CFR), part 47 or part 48, and on persons operating foreign civil unmanned aircraft in the United States. The proposed rule would also impose requirements on persons applying for and using FAA-recognized identification areas (areas specifically recognized by the FAA where UAS without remote identification equipment could operate) and requirements for persons developing means of compliance (*e.g.,* standards) that describe how a UAS would be designed and produced to meet the performance requirements proposed in this rule. Finally, the proposed rule would require persons designing and producing UAS with remote identification for operations in the United States to produce them using an FAA-accepted means of compliance.

UAS owners, UAS operators (including pilots, remote pilots, recreational flyers, and other persons manipulating the flight controls of UAS), UAS designers and producers, developers of remote identification means of compliance, and Remote Identification UAS Service Suppliers (Remote ID USS) would have important roles in the remote identification of UAS. The subsections that follow describe the roles and responsibilities of each of these groups within the scope of the proposed rule.

1. UAS Owners

The FAA proposes to revise the registration requirements to require all owners of unmanned aircraft to register each unmanned aircraft individually when registering under part 48. Furthermore, the owners of standard or limited remote identification unmanned aircraft would have to provide the serial number of all unmanned aircraft registered under part 47 or part 48, on or before the 36th month after the effective date of the final rule. The serial number would establish the unique identity of the unmanned aircraft. The serial number provided during registration or re-registration would have to be issued by the producer of the unmanned aircraft and comply with the ANSI/CTA–2063–A serial number standard.

Owners of unmanned aircraft used exclusively for limited recreational operations[5] who currently register multiple aircraft under a single registration number would be required to register each aircraft, individually by manufacturer, model, and, if the unmanned aircraft is a standard or limited remote identification unmanned aircraft, the aircraft's serial number, on or before the 36th month after the effective date of the final rule. The owners of small unmanned aircraft registered after the effective date of the final rule would have to comply with the new registration requirements prior to the operation of the unmanned aircraft.

The registration requirements are discussed in section IX of this preamble.

2. UAS Operators

i. Remote Identification Operating Requirements

Under the proposed rule, a person operating a UAS in the airspace of the United States would have to meet the remote identification requirements in one of three ways, depending upon the capabilities of the UAS, on or before the 36th month after the effective date of the final rule.

a. Standard Remote Identification UAS

For purposes of this proposed rule, a ''standard remote identification UAS'' is a UAS with remote identification equipment capable of both: (1) Connecting to the internet and transmitting through that internet connection to a Remote ID USS; and (2) broadcasting directly from the unmanned aircraft. Standard remote identification UAS are discussed further in section X.A.1 of this preamble. Any person operating a standard remote identification UAS would be required to ensure:

- The UAS was designed and produced to meet the minimum performance requirements of the rule using an FAA-accepted means of compliance for standard remote identification UAS. Persons would be able to meet this obligation by ensuring that the serial number of the standard remote identification UAS is listed on an FAA-accepted declaration of compliance. A person operating a UAS would be able to read the label on the aircraft indicating whether the UAS is a

[5] This proposal uses the term ''limited recreational operations'' when discussing current registration requirements under part 48. Part 48 uses the term ''model aircraft'' to describe recreational UAS operations. The FAA considers that model aircraft under part 48 are consistent with the ''limited recreational operations'' described in 49 U.S.C. 44809, therefore ''limited recreational operations'' has been used throughout to ensure consistency of terminology with current statutory requirements.

standard or limited remote identification UAS. Additionally, a person could determine whether the UAS is listed on an FAA-accepted declaration of compliance by verifying the status on the FAA's website. The standard remote identification UAS broadcasts the remote identification message elements directly from the unmanned aircraft from takeoff to landing.

• When the internet is available at takeoff, the standard remote identification UAS connects to the internet and transmits the required message elements through that internet connection to a Remote ID USS.

The required message elements include, among others, a UAS Identification to establish the unique identity of the UAS. Operators would have to choose whether to use the serial number of the unmanned aircraft or a session ID (*e.g.,* a randomly-generated alphanumeric code assigned by a Remote ID USS on a per-flight basis designed to provide additional privacy to the operator) as the UAS Identification. The required message elements are discussed in section XII.C of this preamble.

A person could operate a standard remote identification UAS only if: (1) It has a serial number that is listed on an FAA-accepted declaration of compliance; (2) its remote identification equipment is functional and complies with the requirements of the proposed rule from takeoff to landing; and (3) its remote identification equipment and functionality have not been disabled.

b. Limited Remote Identification UAS

For purposes of this proposed rule, a ''limited remote identification UAS'' is a UAS that: (1) Is designed and produced to restrict operation to no more than 400 feet from its control station; (2) is capable of connecting to the internet and transmitting the remote identification message elements through that internet connection to a Remote ID USS; and (3) cannot broadcast remote identification message elements. Limited remote identification UAS are discussed further in section X.A.2 of this preamble. Persons operating a limited remote identification UAS would be required to operate within visual line of sight and ensure that:

• The UAS was designed and produced to meet the minimum performance requirements of the rule using an FAA-accepted means of compliance for a limited remote identification UAS. Persons would be able to meet this obligation by ensuring that the serial number of the limited remote identification UAS is listed on an FAA-accepted declaration of compliance. Additionally, a person could determine whether the UAS is listed on an FAA-accepted declaration of compliance by verifying the status on the FAA's website.

• From takeoff to landing, the limited remote identification UAS connects to the internet and transmits the required remote identification message elements through that internet connection to a Remote ID USS.

The required message elements would include, among others, a UAS Identification to establish the unique identity of the UAS. Operators would have to choose whether to use the unmanned aircraft's serial number or a session ID assigned by a Remote ID USS as the UAS Identification. The required message elements are discussed in section XII.C of this preamble.

A person could operate a limited remote identification UAS only if: (1) it has a serial number that is listed on an FAA-accepted declaration of compliance; (2) its remote identification equipment is functional and complies with the requirements of the proposed rule from takeoff to landing; and (3) its remote identification equipment and functionality have not been disabled. Examples of the use of limited remoted identification UAS are further discussed in section X.G of this preamble.

c. UAS Without Remote Identification Equipment

Under the proposed rule, the vast majority of UAS would be required to have remote identification capability, however as discussed in section X. A. 3, a limited number of UAS would continue to not have remote identification. The FAA envisions that upon full implementation of this rule, no unmanned aircraft weighing more than 0.55 pounds will be commercially available that is not either a standard remote identification UAS or a limited remote identification UAS. However, there will be certain UAS including amateur built aircraft and previously manufactured UAS that might not have remote identification capability. A person operating a UAS without remote identification equipment would always be required to operate within visual line of sight [6] and within an FAA-recognized identification area. Under the proposed rule, an FAA-recognized identification area is a defined geographic area where UAS without remote identification can operate. An area would be eligible for establishment as an FAA-recognized identification area if it is a flying site that has been established within the programming of a community based organization recognized by the Administrator. The FAA would maintain a list of FAA-recognized identification areas at *https://www.faa.gov.* FAA-recognized identification areas are discussed further in section XV of this preamble.

ii. Prohibition Against the Use of ADS–B Out and Transponders

The proposed rule also prohibits use of ADS–B Out and transponders for UAS operations under 14 CFR part 107 and part 91 unless otherwise authorized by the FAA. The FAA is concerned that the potential proliferation of ADS–B Out transmitters on UAS may negatively affect the safe operation of manned aircraft in the airspace of the United States. The projected numbers of UAS operations have the potential to saturate available ADS–B frequencies, affecting ADS–B capabilities for manned aircraft and potentially blinding ADS–B ground receivers. The FAA is therefore proposing that UAS operators, with limited exceptions, be prohibited from using ADS–B Out or transponders. The prohibition against the use of ADS–B Out and transponders is discussed in Section XVI of this preamble.

3. UAS Designers and Producers

For each UAS designed or produced for operation in the United States, the person responsible for the design or production of the unmanned aircraft system (with limited exceptions included in the proposal) would be required to design or produce the UAS in accordance with the performance requirements for a standard remote identification UAS or limited remote identification UAS using an FAA-accepted means of compliance for remote identification on or before the 24th month after the effective date of the final rule.

A person responsible for the production of UAS (with limited exceptions) would be required to:

• Issue each unmanned aircraft a serial number that complies with the ANSI/CTA–2063–A serial number standard.

• Label the unmanned aircraft to indicate that it is remote identification compliant and indicate whether the UAS is standard remote identification or limited remote identification.

• Submit a declaration of compliance for acceptance by the FAA, declaring

[6] While this proposed rule does not propose any changes to requirements related to beyond visual line of sight (BVLOS) operations, the FAA intends for the rule to be dynamic to account for future changes related to line of sight operations. The FAA specifically notes that this rulemaking requires UAS without remote identification equipment to always be operated within line of sight.

that the UAS complies with the requirements of the proposed rule.

The FAA could ask the person responsible for the production of the UAS to submit additional information or documentation, as needed, to supplement a declaration of compliance. The FAA would notify the submitter of its acceptance of a declaration of compliance. The FAA would also provide a list of accepted declarations of compliance at *https://www.faa.gov.*

A person that submits a declaration of compliance would be required to retain certain data for as long as the UAS listed on that declaration of compliance is produced plus an additional 24 calendar months. If the FAA rescinds its acceptance of a declaration of compliance, the submitter of the FAA-accepted declaration of compliance or any person adversely affected by the rescission of the Administrator's acceptance of the declaration of compliance may petition the FAA to reconsider the rescission by submitting a request for reconsideration to the FAA within 60 calendar days of publication in the **Federal Register** of a notice of rescission.

4. Developers of Remote Identification Means of Compliance

Means of compliance, as discussed in section XII of this preamble, are developed by persons or organizations to describe methods by which a person designing or producing a UAS with remote identification may comply with the performance requirements of this proposed rule. Under the proposed rule, a means of compliance would have to be accepted by the FAA before it could be used for the design and production of UAS with remote identification. A person or entity seeking acceptance by the FAA of a means of compliance for UAS with remote identification equipment would be required to submit the means of compliance to the FAA. The FAA would review the means of compliance to determine if it meets the minimum performance requirements, and testing and validation procedures of the proposed rule. Specifically, the person or entity would have to submit a detailed description of the means of compliance, a justification for how the means of compliance meets the minimum performance requirements of the proposed rule, and any substantiating material the person or entity wishes the FAA to consider as part of the application. The minimum performance requirements, and testing and validation procedures, are discussed in sections XII.D and XII.F of this preamble. A person or entity who submits a means of compliance that is accepted by the FAA would have to retain certain data for as long as the means of compliance is accepted plus an additional 24 calendar months.

The FAA would indicate acceptance of a means of compliance by notifying the submitter of the acceptance of the proposed means of compliance. The FAA also expects to notify the public that it has accepted the means of compliance by including it on a list of accepted means of compliance at *https://www.faa.gov.* The FAA would not disclose commercially valuable information in this document.

5. Remote ID USS

The proposed rule would require persons operating UAS with remote identification to transmit the remote identification message elements to a Remote ID USS over the internet. A Remote ID USS would be a service provider qualified by the Administrator to provide remote identification services to UAS. Each Remote ID USS would be required to establish a contractual relationship with the FAA through a Memorandum of Agreement (MOA) entered into under the FAA's ''other transaction authority'' under 49 U.S.C. 106(l) and (m), and to comply with a series of terms, conditions, limitations, and technical requirements that outline how the Remote ID USS must interpret and provide data to external users, as well as store and protect such data. The Remote ID USS would also be contractually required to meet quality-of- service metrics that would establish the minimum requirements for providing remote identification services, including availability of the service and what happens when various failures occur. To implement remote identification, the FAA anticipates establishing a cooperative data exchange mechanism between the FAA and Remote ID USS, as discussed in section XIV of this preamble.

Remote ID USS would be required to demonstrate four primary capabilities: (1) The ability to share the remote identification message elements in near real-time with the FAA upon request; (2) the ability to maintain remote identification information securely and to limit access to such information; (3) the ability to meet contractually-established technical parameters; and (4) the ability to inform the FAA when their services are active and inactive. Another capability of a Remote ID USS may be to generate and provide UAS operators with a UAS Identification known as a session ID. A session ID would be a randomly-generated alphanumeric code that is used only for one flight. UAS operators would have the option to use a Session ID to identify the UAS instead of the serial number, to provide a greater level of privacy. This capability would be defined in the technical requirements agreed to in the MOA.

To become an FAA-qualified Remote ID USS, a prospective Remote ID USS would enter into an MOA with the FAA, demonstrate it meets the technical requirements, and successfully test the end-to-end system and connections. Prospective Remote ID USS would also be reviewed for consistency with national security and cybersecurity requirements and export administration regulations. FAA-qualified Remote ID USS would be subject to ongoing FAA review to ensure compliance and quality-of-service.

6. Table of Major Provisions

Table 1 provides a summary of the major provisions of this proposed rule.

TABLE 1—SUMMARY OF MAJOR PROVISIONS

Issue	Proposed requirement	CFR section
Registration Requirements		
Individual registration of unmanned aircraft and conforming changes.	Requires the individual registration of all unmanned aircraft registered under part 48.	48.100 48.110
	Requires each unmanned aircraft to be registered under a unique registration number. Eliminates existing option to allow multiple recreational unmanned aircraft to register under a single registration number.	48.5 48.30 48.115 48.200

TABLE 1—SUMMARY OF MAJOR PROVISIONS—Continued

Issue	Proposed requirement	CFR section
Serial numbers for unmanned aircraft	The unmanned aircraft serial number provided as part of an application for aircraft registration for a standard remote identification or limited remote identification unmanned aircraft would be the serial number issued by the manufacturer in accordance with the requirements of part 89.	47.14
	The owner of a small unmanned aircraft would have to include the manufacturer and model name of the unmanned aircraft during the registration or registration renewal process, and for any standard or limited remote identification unmanned aircraft, the serial number issued by the manufacturer.	48.100
	Adds clarifying language for existing registration requirements for part 107 operators.	48.15
Telephone number(s) for applicant for registration.	Requires telephone number(s) of applicant at time of registration	48.100
	Operating Requirements	
Applicability of operating requirements	The remote identification operating requirements would apply to: (1) Persons operating unmanned aircraft registered or required to be registered under parts 47 or 48; and (2) persons operating foreign civil unmanned aircraft in the United States.	89.101
Remote identification requirements generally.	No person would be allowed to operate a UAS within the airspace of the United States unless the operation is conducted under one of the following: (1) The UAS is a standard remote identification UAS and that person complies with the requirements of § 89.110; (2) the UAS is a limited remote identification UAS and that person complies with the requirements of § 89.115; or (3) the UAS does not have remote identification equipment and that person complies with the requirements of § 89.120.	89.105
Standard remote identification UAS	*Remote identification* ..... If the internet is available at takeoff, the UAS would have to do the following from takeoff to landing: (1) Connect to the internet and transmit the required remote identification message elements through that internet connection to a Remote ID USS; and (2) broadcast the message elements directly from the unmanned aircraft. If the internet is unavailable at takeoff, or if during the flight, the unmanned aircraft can no longer transmit through an internet connection to a Remote ID USS, the UAS would have to broadcast the message elements directly from the unmanned aircraft from takeoff to landing. *In-flight loss of broadcast capability:* A person manipulating the flight controls of a standard remote identification UAS that can no longer broadcast the message elements would have to land as soon as practicable. *Operation of standard remote identification UAS:* A person would be allowed to operate a standard remote identification UAS only if it meets the following requirements: (1) Its serial number is listed on an FAA-accepted declaration of compliance; (2) its remote identification equipment is functional and complies with the requirements of proposed part 89 from takeoff to landing; and (3) its remote identification equipment and functionality have not been disabled.	89.110
Limited remote identification UAS	*Remote identification* ..... The UAS would have to do the following from takeoff to landing: (1) Connect to the internet and transmit the required remote identification message elements through that internet connection to a Remote ID USS; and (2) be operated within visual line of sight. *In-flight loss of remote identification:* A person manipulating the flight controls of a limited remote identification UAS would have to land as soon as practicable when it cannot transmit the message elements through an internet connection to a Remote ID USS. *Operation of limited remote identification UAS:* A person would be allowed to operate a limited remote identification UAS only if it meets the following requirements: (1) Its serial number is listed on an FAA-accepted declaration of compliance; (2) its remote identification equipment is functional and complies with the requirements of proposed part 89 from takeoff to landing; and (3) its remote identification equipment and functionality have not been disabled.	89.115
UAS without remote identification	The limited number of UAS that do not have remote identification equipment would be allowed to operate within visual line of sight and within an FAA-recognized identification area.	89.120

TABLE 1—SUMMARY OF MAJOR PROVISIONS—Continued

Issue	Proposed requirement	CFR section
	With authorization from the Administrator, a person may operate a UAS that does not have remote identification for the purpose of aeronautical research or to show compliance with regulations.	
Transponder and Automatic Dependent Surveillance-Broadcast (ADS–B) use.	ADS–B Out equipment may not be used to comply with the remote identification requirements.	89.125
	ATC transponder and altitude-reporting equipment and use requirements do not apply to persons operating UAS unless the operation is conducted under a flight plan and the person operating the UAS maintains two-way radio communication with ATC, or the use of a transponder is otherwise authorized by the Administrator.	91.215
	No person would be allowed to operate a small UAS with a transponder on, unless otherwise authorized by the Administrator.	107.52
	ADS–B equipment and use requirements do not apply to persons operating UAS unless the operation is conducted under a flight plan and the person operating the UAS maintains two-way radio communication with ATC, or the use of ADS–B Out is otherwise authorized by the Administrator.	91.225
	No person would be allowed to operate a small UAS with ADS–B Out equipment in transmit mode, unless otherwise authorized by the Administrator.	107.53
Confirmation of identification for foreign registered civil unmanned aircraft operated in the United States.	No person would be allowed to operate a foreign registered civil unmanned aircraft in the United States unless, prior to the operation, the person submits a notice of identification that includes basic information regarding the unmanned aircraft and the person responsible for the operation.	89.130
Record Retention	The Administrator shall require any Remote ID USS to retain any remote identification message elements for 6 months from the date when the remote identification message elements are received or otherwise come into the possession of the Remote ID USS.	89.135
FAA-recognized identification areas		
Applicability	Prescribes procedural requirements to establish an FAA-recognized identification area.	89.201
Eligibility	Only a community based organization (CBO) recognized by the Administrator would be allowed to apply for the establishment of an FAA-recognized identification area.	89.205
Requests for establishment	*Application*	89.210
	A CBO requesting establishment of an FAA-recognized identification area would have to submit an application within 12 calendar months from the effective date of the final rule. The FAA will not consider any applications submitted after that date.	
	Required documentation	89.210
	A request for establishment of an FAA-recognized identification area would have to contain the following information: • Name of the CBO making the request. • Declaration that the person making the request has the authority to act on behalf of the CBO. • Name and contact information, including telephone number(s), of the primary point of contact for communications with the FAA. • Physical address of the proposed FAA-recognized identification area. • Latitude and longitude coordinates delineating the geographic boundaries of the proposed FAA-recognized identification area. • If applicable, a copy of any existing letter of agreement regarding the flying site.	
	Approval of an FAA-recognized identification area	89.215
	FAA would approve or deny applications for FAA-recognized identification areas, and may take into consideration matters including but not limited to: the effects on existing or contemplated airspace capacity, critical infrastructure, existing or proposed manmade objects, natural objects, or the existing use of the land, within or close to the proposed FAA-recognized identification area; the safe and efficient use of airspace by other aircraft; and the safety and security of persons or property on the ground.	
	Amendment	89.220
	Any change to the information submitted in the application for establishment of an FAA-recognized identification area would have to be submitted to the FAA within ten calendar days of the change. Such information includes, but would not be limited to, a change to the point of contact for the FAA-recognized identification area, or a change to the community based organization's affiliation with the FAA-recognized identification area.	

TABLE 1—SUMMARY OF MAJOR PROVISIONS—Continued

Issue	Proposed requirement	CFR section
	If the community based organization wishes to change the geographic boundaries of the FAA-recognized identification area, the organization must submit the request to the FAA for review. The geographic boundaries of the FAA-recognized identification area will not change until they have been approved or denied in accordance with § 89.215.	
	Duration of an FAA-recognized identification area	89.225
	An FAA-recognized identification area would be in effect for 48 calendar months after the date the FAA approves the request for establishment of an FAA-recognized identification area.	
	Renewal	89.225
	A request for renewal would have to be submitted no later than 120 days prior to the expiration of the FAA-recognized identification area in a form and manner acceptable to the Administrator. The Administrator may deny requests submitted after that deadline or requests submitted after the expiration of the FAA-recognized identification area.	
Expiration and termination	*Expiration*	89.230
	Unless renewed, an FAA-recognized identification area would be automatically cancelled and have no further force or effect as of the day immediately after its expiration date.	
	Termination prior to expiration (by request):	
	A CBO may submit a request to the Administrator to terminate an FAA-recognized identification area. Once an FAA-recognized identification area is terminated, that CBO may not reapply to have that flying site reestablished as an FAA-recognized identification area.	
	Termination by FAA:	
	FAA would be able to terminate an FAA-recognized identification area for cause or upon a finding that the FAA-recognized identification area could pose a risk to aviation safety, public safety, or national security or that the person who submitted a request for establishment of an FAA-recognized identification area provided false or misleading information during the submission process.	
	Once an FAA-recognized identification area is terminated, that CBO may not reapply to have that flying site reestablished as an FAA-recognized identification area.	
	Petition to reconsider the FAA's decision to terminate an FAA recognized identification area:	
	A CBO whose FAA-recognized identification area has been terminated by the FAA would be able to petition for reconsideration by submitting a request for reconsideration and establishing the grounds for such reconsideration within 30 calendar days of the date of issuance of the termination.	
	Requirements for UAS with Remote Identification	
Applicability	Prescribes the minimum message elements set and minimum performance requirements for standard remote identification UAS and limited remote identification UAS.	89.301
Message elements broadcast and transmitted by standard remote identification UAS.	Standard remote identification UAS would have to broadcast and transmit the following remote identification message elements: • The identity of the UAS consisting of one of the following: ○ The serial number assigned to the unmanned aircraft by the producer. ○ Session ID assigned by a Remote ID USS. • An indication of the latitude and longitude of the control station and unmanned aircraft. • An indication of the barometric pressure altitude of the control station and unmanned aircraft. • A Coordinated Universal Time (UTC) time mark. • An indication of the emergency status of the UAS, which could include lost-link or downed aircraft.	89.305
Minimum performance requirements for standard remote identification UAS.	Standard remote identification UAS would have to meet minimum performance requirements related to the following: • Control station and unmanned aircraft location. • Automatic Remote ID USS connection. • Time mark. • Self-testing and monitoring. • Tamper resistance. • Connectivity. • Error correction. • Interference considerations.	89.310

TABLE 1—SUMMARY OF MAJOR PROVISIONS—Continued

Issue	Proposed requirement	CFR section
	• Message transmission requirements for broadcast and Remote ID USS transmission. • Message elements performance requirements for broadcast and Remote ID USS transmission. • Cybersecurity.	
Message elements transmitted by limited remote identification UAS.	Limited remote identification UAS would have to transmit the following remote identification message elements: • The identity of the UAS consisting of one of the following: ○ The serial number assigned to the unmanned aircraft by its producer. ○ Session ID assigned by a Remote ID USS. • An indication of the latitude and longitude of the control station. • An indication of the barometric pressure altitude of the control station. • A Coordinated Universal Time (UTC) time mark. • An indication of the emergency status of the UAS, which could include lost-link or downed aircraft.	89.315
Minimum performance requirements for limited remote identification UAS.	Limited remote identification UAS would have to meet minimum performance requirements related to the following: • Control station location. • Automatic Remote ID USS connection. • Time mark. • Self-testing and monitoring. • Tamper resistance. • Connectivity. • Error correction. • Interference considerations. • Message transmission requirements for Remote ID USS transmission. • Message elements performance requirements for Remote ID USS transmission. • Cybersecurity. • Range limitation. • Broadcast limitation.	89.320
Means of Compliance		
Applicability	Prescribes the following: • Requirements for means of compliance. • Procedural requirements for the submission and acceptance of means of compliance. • Rules governing persons submitting means of compliance for FAA acceptance.	89.401
Submitting a means of compliance for FAA acceptance.	Any person would be able to submit a means of compliance for acceptance by the FAA by submitting certain specified information to the FAA in a form and manner acceptable to the Administrator. A means of compliance would have to include testing and validation procedures for persons designing and producing standard remote identification UAS or limited remote identification UAS to demonstrate through analysis, ground test, or flight test, as appropriate, how the standard remote identification UAS or limited remote identification UAS performs its intended functions and meets the requirements for UAS with remote identification.	89.405
Acceptance of a means of compliance	A person requesting acceptance of a means of compliance would have to demonstrate to the FAA that the means of compliance addresses all applicable requirements and that any UAS with remote identification designed and produced in accordance with such means of compliance would meet the performance requirements of proposed part 89.	89.410
Rescission	*Rescission of FAA's acceptance of a means of compliance* FAA would be able to rescind its acceptance of a means of compliance if it finds that the means of compliance does not meet any of the applicable requirements for a means of compliance.	89.415
Record retention	A person who submits a means of compliance that is accepted by the Administrator would have to retain certain specified data for as long as the means of compliance is accepted plus an additional 24 calendar months.	89.420

TABLE 1—SUMMARY OF MAJOR PROVISIONS—Continued

Issue	Proposed requirement	CFR section
Design and Production of UAS with Remote Identification		
Applicability	Applies to the design and production of UAS operating in the United States *except* for the design and production of the following (*unless* they are standard remote identification UAS or limited remote identification UAS, in which case they would have to comply with the design and production requirements of the proposed rule): • Amateur-built UAS. • UAS of the United States Government. • UAS where the unmanned aircraft weighs less than 0.55 pounds including the weight of anything attached to or carried by the aircraft. • UAS produced for the purpose of aeronautical research or showing compliance with regulations. Prescribes the following: • Requirements for design and production of UAS operating in the United States. • Procedural requirements for the submission and acceptance of declarations of compliance. • Rules governing persons holding FAA-accepted declarations of compliance or operating UAS with remote identification.	89.501
Serial numbers	Producers of UAS with remote identification would have to issue each unmanned aircraft a serial number that complies with ANSI/CTA–2063–A.	89.505
Design and production requirements	No person would be allowed to produce a UAS unless • The UAS is designed and produced to meet the minimum performance requirements for standard remote identification UAS or limited remote identification UAS using an FAA-accepted means of compliance. • The UAS meets the requirements of proposed subpart F. • The FAA has accepted a declaration of compliance for that UAS. Producers of UAS would have to: • Allow the Administrator to inspect their facilities, technical data, and any standard remote identification UAS or limited remote identification UAS the person produces, and to witness any tests necessary to determine compliance with subpart F. • Perform independent audits on a recurring basis, and whenever the FAA provides notice of noncompliance or of potential noncompliance, to demonstrate the UAS listed under a declaration of compliance meet the requirements of subpart F. The person responsible for the production of standard remote identification UAS or limited remote identification UAS must provide the results of all such audits to the FAA upon request. • Maintain product support and notification procedures to notify the public and the FAA of any defect or condition that causes a UAS to no longer meet the requirements of subpart F, within 15 calendar days of the date the person becomes aware of the defect or condition.	89.510
Labeling	Persons responsible for the production of UAS with remote identification would have to include a label on the UAS to indicate that it meets the remote identification requirements and whether the unmanned aircraft system is a standard remote identification UAS or limited remote identification UAS. The label would have to be in English and be legible, prominent, and permanently affixed to the unmanned aircraft.	89.515
Submission of declaration of compliance for FAA acceptance.	The person responsible for the production of a UAS with remote identification equipment would have to submit a declaration of compliance for acceptance by the FAA. The declaration of compliance would have to include certain specified information, including a declaration that: • The UAS was designed and produced using an FAA-accepted means of compliance. • The person responsible for the production of the UAS complies with the requirements of § 89.510(b).	89.520
Acceptance of a declaration of compliance.	The FAA would notify the submitter of its decision to accept or reject a declaration of compliance.	89.525
Rescission and reconsideration	*Rescission of FAA's acceptance of a declaration of compliance*	89.530

TABLE 1—SUMMARY OF MAJOR PROVISIONS—Continued

Issue	Proposed requirement	CFR section
	The FAA would be able to rescind its acceptance of a declaration of compliance if it determines any of the following: (1) A UAS with remote identification listed under an FAA-accepted declaration of compliance does not meet the applicable minimum performance requirements; (2) an FAA-accepted declaration of compliance does not meet any of the relevant requirements of proposed part 89; or (3) the FAA rescinded its acceptance of the means of compliance listed in an FAA-accepted declaration of compliance. If the FAA determines it is in the public interest, prior to rescission, it would be able to provide a reasonable period of time for the person holding the declaration of compliance to remediate the noncompliance. *Petition for reconsideration:* The person who submitted the FAA-accepted declaration of compliance or any person adversely affected by the rescission would be able to petition for reconsideration within 60 days of the rescission. The petition would have to show that the petitioner is an interested party and has been adversely affected by the rescission. The petition would also have to demonstrate one of the following: (1) The petitioner has a significant additional fact not previously presented to the FAA; (2) the Administrator made a material error of fact in the decision to rescind its acceptance; or (3) that the Administrator did not correctly interpret a law, regulation, or precedent.	
Record retention	A person who submits a declaration of compliance that is accepted by the Administrator would have to retain certain specified data for as long as the UAS listed on that declaration of compliance are produced plus an additional 24 calendar months. That person would have to also make certain information available for inspection by the FAA, including: (1) The means of compliance, all documentation, and substantiating data related to the means of compliance used; (2) records of all test results; and (3) any other information necessary to demonstrate compliance with the means of compliance so that the UAS meets the remote identification requirements and the design and production requirements of this part.	89.535
Definitions and Abbreviations		
Definitions	• Unmanned aircraft system • UAS service supplier. • Visual line of sight. • Amateur-built unmanned aircraft system • Broadcast. • Remote ID USS.	1.1 89.1
Abbreviations	• USS means a UAS service supplier	1.2
Falsification, Reproduction, Alteration, or Omission		
Falsification, reproduction or alteration	No person would be allowed to make or cause to be made any of the following • Any fraudulent or intentionally false statement in any document related to any acceptance, application, approval, authorization, certificate, declaration, designation, qualification, record, report, request for reconsideration, or similar, submitted under this part. • Any fraudulent or intentionally false statement in any document required to be developed, provided, kept, or used to show compliance with any requirement under this part. • Any reproduction or alteration, for fraudulent purpose, of any document related to any acceptance, application, approval, authorization, certificate, declaration, designation, qualification, record, report, request for reconsideration, or similar, submitted or granted under this part. No person may conceal a material fact in: • Any document related to any acceptance, application, approval, authorization, certificate, declaration, designation, qualification, record, report, request for reconsideration, or similar, submitted under this part. • Any document required to be developed, provided, kept, or used to show compliance with any requirement under this part. The commission of a prohibited act would result in: • Suspension, rescission, or revocation of any acceptance, application, approval, authorization, certificate, declaration, declaration of compliance, designation, document, filing, qualification, means of compliance, record, report, request for reconsideration, or similar instrument issued or granted by the Administrator and held by that person. • A civil penalty.	89.5

D. Summary of Costs and Benefits

This proposed rule would provide remote identification of UAS in the airspace of the United States to address safety, security, and law enforcement concerns regarding the further integration of these aircraft into the airspace of the United States while also enabling greater operational capabilities. This proposal would promote public safety and the safety and efficiency of the airspace of the United States. The remote identification framework would provide UAS-specific data, which may be used in tandem with new technologies and infrastructure to facilitate more advanced operational capabilities (such as detect-and-avoid and aircraft-to-aircraft communications that support beyond visual line of sight operations) and to develop the necessary elements for comprehensive UAS traffic management (UTM). Furthermore, remote identification of UAS provides airspace awareness to the FAA, national security agencies, and law enforcement entities. This information could be used to distinguish compliant airspace users from those potentially posing a safety or security risk fulfilling a key requirement for law enforcement and national security agencies charged with protecting public safety.

This proposed rule would result in additional costs for persons responsible for the production of UAS, owners and operators of registered unmanned aircraft, community based organizations, Remote ID USS, and the FAA. This proposal would provide cost savings for the FAA and law enforcement resulting from a reduction in hours and associated costs expended investigating UAS incidents.[7] Additionally, part 107 allows individuals to request waivers from certain provisions, including those prohibiting operations at night and over people. This proposed rule, in concert with the FAA's proposed rule for operations over people would create cost savings for the FAA and part 107 operators by avoiding the time expended processing waivers for these activities.[8]

The analysis of this proposed rule is based on the fleet forecast for small unmanned aircraft as published in the FAA Aerospace Forecast.[9] The forecast includes base, low, and high scenarios. This analysis provides a range of net impacts from low to high based on these forecast scenarios. The FAA considers the primary estimate of net impacts of the proposed rule to be the base scenario. For the primary estimate, over a 10-year period of analysis this proposed rule would result in net present value costs of about $582 million at a three percent discount rate with annualized net costs of about $68 million. At a seven percent discount rate, the net present value costs are about $474 million with annualized net costs of $67 million. The following table presents a summary of the primary estimates of the quantified costs and cost savings of this proposed rule. Additional details, including low and high estimates of quantified net costs, are provided in the Regulatory Evaluation section of this proposal and in the Preliminary Regulatory Impact Analysis available in the docket for this rulemaking.

TABLE 2—PRELIMINARY ESTIMATES OF COSTS AND COST SAVINGS OF PROPOSED RULE ($MILLIONS) * BASE SCENARIO—PRIMARY ESTIMATE

Affected entity/category	10-year present value (at 3%)	Annualized (at 3%)	10-year present value (at 7%)	Annualized (at 7%)
UAS Owners/Operators	$145.87	$17.10	$117.48	$16.73
Remote ID USS Subscription	241.72	28.34	191.74	27.30
UAS Producers (US and Foreign)	134.58	15.78	111.58	15.89
Developers of Remote ID Means of Compliance	2.85	0.33	2.36	0.34
Remote ID USS Memoranda of Agreement	1.60	0.19	1.43	0.20
Community Based Organizations	0.39	0.05	0.35	0.05
FAA Costs	56.96	6.68	50.33	7.17
Total Costs	583.98	68.46	475.27	67.67
Cost Savings (reduced hours for FAA investigations)	(2.45)	(0.29)	(1.82)	(0.26)
Net Costs	581.52	68.17	473.46	67.41

* **Table notes:** Column totals may not sum due to rounding and parenthesis, "( )", around numbers to indicate savings.

The FAA expects this proposed rule will result in several important benefits and enhancements to support the safe integration of expanded UAS operations in the airspace of the United States. The proposal would provide situational awareness of UAS operations to other aircraft and airport operators. The proposed rule would provide information to distinguish compliant UAS users from those potentially posing a safety or security risk. The following table summarizes the benefits of the proposed rule.

TABLE 3—SUMMARY OF BENEFITS OF PROPOSED RULE

Safety and Security	• Provides situational awareness of UAS flying in the airspace of the United States to other aircraft in the vicinity of those operations and airport operators.

[7] This analysis includes quantified savings to the FAA only. A variety of other entities involved with airport operations, facility and infrastructure security, and law enforcement would also save time and resources involved with UAS identification and incident reporting, response and investigation. The FAA plans to update its estimates of savings for additional information and data identified during the comment period and development of the final rule.

[8] On February 13, 2019, the FAA published a notice of proposed rulemaking titled "Operation of Small Unmanned Aircraft Systems over People," (84 FR 3856) in which the FAA proposed to allow operations of small unmanned aircraft over people in certain conditions and operations of small UAS at night without obtaining a waiver.

[9] FAA Aerospace Forecast Fiscal Years 2019–2039, *available at https://www.faa.gov/data_research/aviation/aerospace_forecasts/media/FY2019–39_FAA_Aerospace_Forecast.pdf.* The forecast provides a base (*i.e.,* likely) with high (or optimistic) and low (or pessimistic) scenarios. The low and high forecast scenarios are not symmetric around the base—please see the forecast report for more information.

TABLE 3—SUMMARY OF BENEFITS OF PROPOSED RULE—Continued

Enables Expanded Operations and UAS Integration.	• Provides information to distinguish compliant UAS users from those potentially posing a safety or security risk. • Enables the FAA, national security agencies, and law enforcement entities to obtain situational awareness of UAS in the airspace of the United States in near real-time. • Provides additional registration and notification requirements for identifying aircraft and promoting accountability and the safe and efficient use of the airspace of the United States. • Assists in the implementation of operations of small UAS over people and at night. A final rule for operation of small UAS over people and at night is contingent upon a final action for UAS with remote identification being in effect. • Provides UAS-specific data to facilitate future, more advanced operational capabilities, such as detect-and-avoid and aircraft-to-aircraft communications that support beyond visual line of sight (BVLOS) operations. • Provides UAS-specific data to develop a comprehensive UAS traffic management (UTM) system that would facilitate the safe expansion of operations.

In addition, the proposed rule provides flexibility through minimum performance requirements that would accommodate future innovation and improve the efficiency of UAS operations. The proposal also does not preclude early compliance for UAS producers or operators to realize earlier expanded operations and commercial opportunities.

E. Structure of This Proposed Rule

This proposed rule addresses remote identification of UAS from a number of perspectives: UAS owners, UAS operators, UAS designers and producers, developers of remote identification means of compliance, and Remote ID USS. The FAA recognizes that certain persons may only be interested in certain topics. Therefore, the following provides the structure of this proposed rule.

Section II of this preamble discusses the FAA's legal authority for promulgating this proposed rule.

Section III of this preamble discusses the integration of UAS into the airspace of the United States. The complexities surrounding the full integration of UAS into the airspace of the United States has led the FAA to engage in a phased, incremental, and risk-based approach to rulemaking based on the statutory authorities delegated to the agency.

Section IV of this preamble discusses the need for remote identification of UAS operating in the airspace of the United States. The section addresses the role of the FAA as the United States civil aviation authority and air navigation service provider, current registration requirements and how those requirements do not provide information responsive to remote identification, current cooperative surveillance for manned aircraft, and the need for situational awareness. The section further explains how remote identification of UAS fits within the FAA's compliance and enforcement programs. The section describes how the FAA envisions remote identification may facilitate beyond visual line of sight (BVLOS) operations in the future. The potential benefits of remote identification of UAS to national security and law enforcement agencies are noted.

Section V of this preamble discusses related international activities.

Section VI of this preamble provides a summary of the Unmanned Aircraft Systems (UAS) Identification (ID) and Tracking Aviation Rulemaking Committee (ARC) (UAS–ID ARC) report and the FAA's response to that report.

Section VII of this preamble discusses the new terms to be defined as part of this proposed rule.

Section VIII of this preamble describes the applicability of the proposed rule. It also discusses the framework of the following sections: Operating requirements for UAS with remote identification, means of compliance, and design and production requirements.

Section IX of this preamble discusses the current registration requirements for unmanned aircraft under part 47 and part 48 and the issues with the current registration requirements in light of the need for remote identification of UAS. The section also discusses the FAA's proposed revision of the registration requirements of part 48 to require the individual registration of unmanned aircraft and the proposed use of unmanned aircraft serial numbers as unique identifiers for remote identification purposes.

Section X of this preamble explains the operating requirements related to remote identification of UAS. It describes the requirements for standard remote identification UAS and limited remote identification UAS. It also discusses the proposed requirements for UAS without remote identification. The section provides the proposed requirements to transmit and broadcast, as appropriate, message elements. It discusses the FAA's proposal to prohibit the use of ADS–B Out to satisfy remote identification of UAS. Finally, it discusses UAS operators' requirement to operate a UAS with remote identification only if that UAS is listed on a valid FAA-accepted declaration of compliance.

Section XI of this preamble discusses law enforcement access to remote identification information.

Section XII of this preamble discusses the FAA's proposed requirements for what an FAA-accepted means of compliance for remote identification would contain. The FAA is proposing that any FAA-accepted means of compliance contain requirements regarding the message elements to be transmitted and the minimum performance requirements for the transmission and broadcast, as appropriate, of those elements. The section discusses the process to submit and have the FAA accept a means of compliance, and data retention requirements for submitters of means of compliance. The section also discusses other requirements the FAA considered in the development of this proposed rule.

Section XIII of this preamble provides the proposed design and production requirements. It discusses the proposed requirement that producers of standard remote identification UAS and limited remote identification UAS issue serial numbers for UAS and that persons producing UAS with remote identification would be required to do so in accordance with the minimum performance requirements of the proposed rule using an FAA-accepted means of compliance. The section also describes the requirement for producers to submit a declaration of compliance, followed by a description of the process for FAA acceptance of declarations of compliance, rescission of those declarations, and the right of a person who submitted the FAA-accepted declaration of compliance or any person adversely affected by the rescission of the Administrator's acceptance of a declaration of compliance to petition for reconsideration of a rescission. Finally, the section discusses data retention requirements for producers submitting FAA-accepted declarations of compliance.

Section XIV of this preamble discusses the role of Remote ID USS. The section describes the FAA's vision regarding the role of Remote ID USS in

providing remote identification services as well as how they will be established and what data provided to them will be publicly available. The section also describes the FAA's vision for data privacy and information security.

Section XV of this preamble provides the overarching requirements for FAA-recognized identification areas to be used by UAS that cannot, or do not, comply with the proposed remote identification requirements.

Section XVI of this preamble discusses the circumstances under which the use of ADS–B Out and transponders for UAS would be prohibited.

Section XVII of this preamble provides the proposed effective dates and compliance dates.

Section XVIII of this preamble discusses the proposed guidance documents.

Sections XIX and XX of this preamble address the FAA's requirements to comply with various statutes and Executive Orders pertaining to all regulations.

Section XXI of this preamble discusses the tribal considerations related to this proposed rule.

Section XXII of this preamble discusses the privacy impact analysis the FAA conducted as part of this proposed rule.

Section XXIII of this preamble provides additional information to persons wishing to provide comments to this proposed rule.

II. Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code (49 U.S.C.). Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

This rulemaking is promulgated pursuant to 49 U.S.C. 40103(b)(1) and (2), which direct the FAA to issue regulations: (1) To ensure the safety of aircraft and the efficient use of airspace; and (2) to govern the flight of aircraft for purposes of navigating, protecting and identifying aircraft, and protecting individuals and property on the ground. In addition, 49 U.S.C. 44701(a)(5) charges the FAA with promoting safe flight of civil aircraft by prescribing regulations the FAA finds necessary for safety in air commerce and national security.

Section 2202 of Public Law 114–190 requires the Administrator to convene industry stakeholders to facilitate the development of consensus standards for remotely identifying operators and owners of UAS and associated unmanned aircraft and to issue regulations or guidance based on any standards developed.

The Administrator is granted the authority under 49 U.S.C. 44805 to establish a process for, among other things, accepting risk-based consensus safety standards related to the design and production of small UAS. Under 49 U.S.C. 44805(b)(7), one of the considerations the Administrator must take into account prior to accepting such standards is any consensus identification standard regarding remote identification of unmanned aircraft developed pursuant to section 2202 of Public Law 114–190.

Additionally, section 44809(f) of 49 U.S.C. provides that the Administrator is not prohibited from promulgating rules generally applicable to unmanned aircraft, including those unmanned aircraft eligible for the exception for limited recreational operations of unmanned aircraft. Among other things, this authority extends to rules relating to the registration and marking of unmanned aircraft and the standards for remotely identifying owners and operators of UAS and associated unmanned aircraft.

The FAA has authority to regulate registration of aircraft under 49 U.S.C. 44101–44106 and 44110–44113, which require aircraft to be registered as a condition of operation and establish the requirements for registration and registration processes.

Finally, this rulemaking is promulgated under the authority described in 49 U.S.C. 106(f), which establishes the authority of the Administrator to promulgate regulations and rules, and 49 U.S.C. 40101(d), which authorizes the FAA to consider in the public interest, among other things, the enhancement of safety and security as the highest priorities in air commerce, the regulation of civil and military operations in the interest of safety and efficiency, and assistance to law enforcement agencies in the enforcement of laws related to regulation of controlled substances, to the extent consistent with aviation safety.

III. Integration of UAS Into the Airspace of the United States

The rapid proliferation of UAS has created significant opportunities and challenges for their integration into the airspace of the United States. The relatively low cost of highly capable UAS technology has allowed for hundreds of thousands of new operators to enter the aviation community.

The complexities surrounding the full integration of UAS into the airspace of the United States have led the FAA to engage in a phased, incremental, and risk-based approach to rulemaking based on the statutory authorities delegated to the agency. On December 16, 2015, the FAA and DOT jointly published an interim final rule in the **Federal Register** titled Registration and Marking Requirements for Small Unmanned Aircraft (''Registration Rule''),[10] which provided for a web-based aircraft registration process for small unmanned aircraft in 14 CFR part 48, to serve as an alternative to the registration requirements for aircraft established in 14 CFR part 47. The Registration Rule imposed marking requirements on small unmanned aircraft registered under part 48 to display a unique identifier in a manner that is visible upon inspection. This unique identifier could be the registration number issued to an individual or to the aircraft by the FAA Registry or the small unmanned aircraft's serial number if authorized by the Administrator and provided with the application for the certificate of aircraft registration.

On June 28, 2016, the FAA and DOT jointly published the final rule for Operation and Certification of Small Unmanned Aircraft Systems (''The 2016 Rule'') in the **Federal Register**.[11] This was an important step towards the integration of civil small UAS operations (for aircraft weighing less than 55 pounds) into the airspace of the United States. The 2016 Rule set the initial operational structure and certain restrictions to allow routine civil operations of small UAS in the airspace of the United States in a safe manner. Prior to the 2016 Rule, the FAA authorized commercial UAS operations, including real estate photography, precision agriculture, and infrastructure inspection, under section 333 of Public Law 112–95. Over 5,500 operators received this authorization. The FAA also issued over 900 Certificates of Waiver or Authorization (COA), allowing Federal, State, and local governments, law enforcement agencies, and public universities to perform numerous tasks with UAS, including search-and-rescue, border patrol, and research. The 2016 Rule allows for certain operations of small UAS in the airspace of the United States without the need for airworthiness certification, exemptions, or certificates of waiver or authorization.

[10] 80 FR 78594.

[11] 81 FR 42064.

The 2016 Rule also imposed certain restrictions on small UAS operations. The restrictions include a prohibition on nighttime operations, limitations on operations conducted during civil twilight, restrictions on operations over people, a requirement for all operations to be conducted within visual line of sight, and other operational, airspace, and pilot certification requirements. Since the rule took effect on August 29, 2016, most low-risk small UAS operations that were previously authorized on a case-by-case basis under Public Law 112–95 section 333 are now considered routine operations. These operations are now permitted within the requirements of part 107 without further interaction with the FAA. Publishing Part 107 was the first significant regulatory step to enable lower risk, less complex UAS operations.

Part 107 opened the airspace of the United States to the vast majority of routine small UAS operations, allowing flight within visual line of sight while maintaining flexibility to accommodate future technological innovations. Part 107 allows individuals to request waivers from certain provisions, including those prohibiting operations over people and beyond visual line of sight. Petitions for waivers from the provisions of part 107 must demonstrate that the petitioner has provided sufficient mitigations to safely conduct the requested operation.

On October 5, 2018, Congress enacted Public Law 115–254, also known as the FAA Reauthorization Act of 2018. The FAA Reauthorization Act of 2018 amended Part A of subtitle VII of title 49, United States Code by inserting a new chapter 448 titled Unmanned Aircraft Systems and incorporating additional authorities and mandates to support the further integration of UAS into the airspace of the United States, including several provisions that specifically deal with the need for remote identification of UAS. Section 376 of the FAA Reauthorization Act of 2018 requires the FAA to perform testing of remote identification technology and to assess the use of remote identification for the development of UTM.

Additionally, congressional action supports the implementation of remote identification requirements for most UAS. Section 349 of the FAA Reauthorization Act of 2018 included a provision indicating that the Administrator is not prohibited from promulgating rules relating to the standards for remotely identifying owners and operators of UAS and associated unmanned aircraft.[12] The provision denotes Congress's acknowledgment that remote identification is an essential part of the UAS regulatory framework. Section 349 also does not prohibit the Administrator from promulgating rules generally applicable to unmanned aircraft related to updates to the operational parameters for unmanned aircraft used for limited recreational operations, the registration and marking of unmanned aircraft, and other standards consistent with maintaining the safety and security of the airspace of the United States.[13]

Lastly, on February 13, 2019, the FAA published three rulemaking documents in the **Federal Register** as part of the next phase for integrating small UAS into the airspace of the United States. The first of such documents was an interim final rule titled ''External Marking Requirement for Small Unmanned Aircraft,'' [14] in which the FAA required small unmanned aircraft owners to display the registration number assigned by the FAA on an external surface of the aircraft. The second rulemaking document was a notice of proposed rulemaking titled ''Operation of Small Unmanned Aircraft Systems Over People,'' [15] in which the FAA proposed to allow operations of small unmanned aircraft over people in certain conditions and operations of small UAS at night without obtaining a waiver. The third rulemaking document was an advance notice of proposed rulemaking titled ''Safe and Secure Operations of Small Unmanned Aircraft Systems,'' [16] in which the FAA sought information from the public on whether and under which circumstances the FAA should promulgate new rules to require stand-off distances, additional operating and performance restrictions, the use of UAS Traffic Management (UTM), additional payload restrictions, and whether the agency should prescribe design requirements and require that unmanned aircraft be equipped with critical safety systems.

IV. Need for Remote Identification of UAS Operating in the Airspace of the United States

A. Maintaining the Safety and Efficiency of the Airspace of the United States

The FAA is both the civil aviation authority and the air navigation service provider (ANSP) for the United States. The FAA has statutory responsibilities to set standards and certify aircraft, airmen, and facilities. In addition, the FAA is responsible for ensuring the safe and efficient use of navigable airspace. The FAA carries out its responsibilities by developing air traffic rules, assigning the use of airspace, and controlling air traffic through a complex network of airport towers, air route traffic control centers, and flight service stations.

The FAA is responsible for serving tens of thousands of commercial and private aircraft operating in 29 million square miles of airspace each day. Through its air traffic management (ATM) system, the FAA coordinates the movements of these aircraft to ensure they operate at safe distances from each other and manages disruptions to normal air traffic flow. The FAA's ability to manage air traffic in the airspace of the United States is predicated on the agency knowing who is operating in the airspace and, if necessary, on being able to communicate with those airspace users.

1. Existing Cooperative Surveillance System

The ATM system relies on appropriately equipped aircraft to provide the surveillance services necessary to ensure the safety and efficiency of the airspace of the United States. In addition to ground-based equipment such as primary and secondary radar, participating aircraft use ATC transponders and ADS–B Out to participate in the ATM's cooperative surveillance environment. Transponders emit a radio frequency response when they are interrogated by ground-based secondary radar systems. Part of the response is the Mode 3/A code which is a four digit number ranging from 0000 to 7777 that allows ATC to identify aircraft under radar surveillance and correlate the target to a flight plan. Other information provides ATC with the location of the aircraft, which is shown on ATC radar displays. After January 1, 2020, aircraft will be required to equip with ADS–B Out to operate in certain airspace.

Some UAS, such as those operating in Class A airspace, are already equipped with transponders and ADS–B Out and operate in accordance with existing rules. But for the majority of UAS, especially those operating at low altitudes, the existing cooperative surveillance system is not capable of providing the necessary services.

Currently, there is no regulatory requirement mandating the remote identification of unmanned aircraft other than the existing equipment rules in part 91 for transponders that are applicable to aircraft in certain airspace and ADS–B Out, which will be required

[12] See 49 U.S.C. 44809.

[13] Id.

[14] 84 FR 3669.

[15] 84 FR 3856.

[16] 84 FR 3732.

for aircraft in certain airspace after January 1, 2020. Because the majority of UAS operations occur at low altitudes, the existing rules do not adequately provide for awareness of who is operating in the airspace. The FAA is therefore proposing to require the remote identification of UAS to enable the agency to identify unmanned aircraft flying in the airspace of the United States and locate the operators of those aircraft. Remote identification equipment would provide identifying information for UAS similar to how ADS–B and transponders provide identifying information for manned aircraft. This information would also be essential for the management of the flow of air traffic as more UAS integrate into the airspace of the United States.

The FAA does not propose the use of transponders or ADS–B Out for remote identification for three primary reasons. First, the use of these technologies would require significant additional infrastructure, including radars and receivers, to cover the lower altitudes of the airspace of the United States where unmanned aircraft are expected to primarily operate. Second, the FAA expects that, due to the volume of unmanned aircraft operations projected, the additional radio frequency signals would saturate the available spectrum and degrade the overall cooperative surveillance system. Finally, transponders and ADS–B Out do not provide any information about the location of control stations, as these systems were designed for manned aircraft. For these reasons, the FAA has determined that existing cooperative surveillance systems are incapable of supporting UAS remote identification and is proposing a new cooperative surveillance technology specifically for UAS. However, the proposal does not prohibit the use of ADS–B In, if the ADS–B In equipment is manufactured and installed in accordance with FAA requirements and guidance.[17]

2. Current Challenges With Associating UAS With Their Owners and Operators

All manned aircraft, unmanned aircraft weighing over 0.55 pounds, and any unmanned aircraft operated pursuant to 14 CFR part 107 or part 91 (irrespective of weight) are subject to FAA's aircraft registration and marking requirements. These requirements are the fundamental means for the FAA to physically identify manned and unmanned aircraft operating in the airspace of the United States and to associate them with their owners. The FAA recognizes that current registration and marking requirements are most useful when the aircraft is static or when information regarding the aircraft and its owner is needed without a direct link to the aircraft itself. In the case of unmanned aircraft in flight, however, registration and marking alone are insufficient to identify the aircraft and to locate the person manipulating the flight controls of a UAS. This is due to both the small size of most unmanned aircraft and to the fact that the person manipulating the flight controls of the UAS is not co-located with the aircraft. The Registration Rule acknowledged that the registration of small unmanned aircraft would provide a means by which to quickly identify the aircraft in the event of an incident or accident involving a small UAS. The Registration Rule also acknowledged that registration of small unmanned aircraft would provide an immediate and direct opportunity for the FAA to educate small UAS owners on safety requirements before they begin operating. The Registration Rule did not, however, envision the use of registration numbers as a means to identify or locate the small UAS owner or the person manipulating the flight controls of the UAS during real-time flight operations.

The small size of most unmanned aircraft makes it difficult—if not impossible—to read their registration numbers from the ground, preventing proper identification of the unmanned aircraft while it is in flight. Although it is true that manned aviation faces similar identification issues (since aircraft registration marks may be impossible to read from the ground when the aircraft is flying at certain altitudes or speeds), there is an important distinction between manned and unmanned aviation that makes the inability to read a registration number from the ground less problematic in manned aviation. In manned aviation, the pilot-in-command is co-located with the aircraft and is therefore more easily identifiable, even if such identification occurs after landing.

In addition, pilots of manned aircraft are often required to, or choose to, maintain two-way communications with air traffic control (ATC) for purposes of receiving air traffic services. This communication helps ascertain the identity and intent of the pilot in command. Furthermore, transponders and ADS–B Out systems transmit unique codes that allow ATC to identify and distinguish aircraft from others flying in the airspace of the United States, as discussed in the preceding section. These means of identification are not currently required or feasible for UAS. The challenge of identifying UAS would only increase with the proliferation of BVLOS operations—when pilots will likely be located far away from the unmanned aircraft location.

3. Situational Awareness

The ability to know the location of unmanned aircraft operating in the airspace of the United States and to identify and locate their operators creates situational awareness of operations conducted in the airspace of the United States, fosters accountability of the operators and owners of UAS, and improves the capabilities of the FAA and law enforcement to investigate and mitigate careless, hazardous, and noncompliant operations. This contributes to safety in air commerce and the efficient use of the airspace of the United States.

Remote identification would provide greater situational awareness of UAS operating in the airspace of the United States to other aircraft in the vicinity of those operations and also provide information to airport operators. Manned aircraft, especially those operating at low altitudes where UAS operations are anticipated to be the most prevalent, such as helicopters and agricultural aircraft, could carry the necessary equipment to display the location of UAS operating nearby. Facility operators could use remote identification information to know about UAS operating near an airport, airfield, or heliport, regardless of the airspace in which the facility is located. This would provide a level of awareness that is currently unavailable for those facilities and the aircraft operating nearby. For example, an aircraft preparing to take off from an airport in Class G airspace may have access to greater information (*e.g.,* number and location of UAS, types of operations conducted in the airspace, etc.) than currently available.

4. Compliance and Enforcement

The safety of the airspace of the United States largely depends on aircraft operators following the prescribed rules and being accountable for their actions. The FAA needs the ability to identify aircraft and their owners to ensure adequate oversight of the operations (*e.g.,* facilitate the identification of noncompliant or unauthorized operations). When unsafe operations are discovered, the FAA is required to adequately address safety issues that may adversely affect the airspace of the United States as well as people and property on the ground. To accomplish this, the FAA needs a means

[17] See Advisory Circulars 20–172B and 90–114A.

to locate UAS operators—in near real-time, if necessary—to take immediate or subsequent action to mitigate safety issues or security threats. Thus, the FAA believes that the remote identification requirements in this proposed rule are necessary to ensure the safety of the airspace of the United States.

If an operator is unwilling or unable to comply with, or is deliberately flouting regulations, the FAA could employ legal enforcement action, including civil penalties and certificate actions, as appropriate, to address violations and help deter future violations. Civil penalties for violations of the federal aviation regulations range from a maximum per violation penalty of $1,466, for individual operators, to $33,333 for large companies. In addition, Congress granted the FAA authority to assess civil penalties of up to $20,000 against an individual who operates a UAS and in so doing knowingly or recklessly interferes with a law enforcement, emergency response, or wildfire suppression activity. The FAA may take enforcement action against anyone who conducts an unauthorized UAS operation or operates a UAS in a way that endangers the safety of the airspace of the United States. This authority is designed to protect users of the airspace as well as people and property on the ground.

B. Unmanned Aircraft Systems Traffic Management (UTM)

The FAA, in an effort to further integrate UAS into the airspace of the United States, is collaborating with other government agencies and industry stakeholders to develop unmanned aircraft systems traffic management (UTM) separate from, but complementary to, the ATM system. The term ''UTM'' refers to a set of third-party services and an all-encompassing framework for managing multiple UAS operations. This vision for UTM includes services for flight planning, communications, separation, and weather, among others. The FAA believes that remote identification facilitates the long-term implementation of UTM by providing greater awareness of all aircraft, including unmanned aircraft, operating in a particular area. UTM would help enable increased UAS operations in both controlled and uncontrolled airspace, including airspace where no air traffic separation services are currently provided.

The vision for UTM[18] relies on third parties' ability to supply services, under FAA's regulatory authority, where such services do not currently exist. The FAA envisions community-based traffic management, where UAS operators have the responsibility for the coordination, execution, and management of a safe operating environment. UTM would be designed to support the demand and expectations for a broad spectrum of UAS operations with ever-increasing complexity and risk.

The concept of UTM is predicated on layers of information sharing and exchange, from operator to operator, aircraft to aircraft, and operator to the FAA, to achieve safe operations. Operators would share their flight intent with each other and coordinate to de-conflict and safely separate trajectories. Remote identification is a crucial first step in the development of these UTM services.

C. Facilitating Beyond Visual Line of Sight Operations

Providing a means to conduct routine BVLOS operations is a critical step in the integration of UAS operations in the airspace of the United States. The technologies and procedures necessary to enable BVLOS operations have been the focus of past and current research by the FAA and others.[19] The research indicated that for UAS to conduct safe, routine BVLOS operation, UAS should be able to detect both cooperative and non-cooperative aircraft (manned and unmanned) so they can maintain a safe distance from those aircraft. Cooperative aircraft are those that are providing information that identifies the location of the aircraft, typically through a standardized and receivable electronic radio frequency broadcast or other type of transmission. Non-cooperative aircraft are those that are not providing any information regarding their location.

A UAS that broadcasts or transmits remote identification information would contribute to a cooperative operating environment. Operators of UAS could use remote identification information available from a Remote ID USS or broadcast directly from other unmanned aircraft to know the location of UAS operating nearby. Such data could be used in UAS detect-and-avoid and aircraft-to-aircraft communication systems to aid in unmanned aircraft collision avoidance. Under UTM, when the locations of other unmanned aircraft become known, the UAS operators would be able to maintain a safe distance from those aircraft.

Although remote identification of UAS does not, in and of itself, permit BVLOS operations, it is a key stepping stone to the future ability to conduct those operations. Without remote identification of UAS, BVLOS operations on a large scale are not feasible, and the foundational building blocks of UTM—which is necessary to enable routine BVLOS operations—are not established.

D. National Security and Law Enforcement Efforts

This proposed rule would serve the public interest by assisting government efforts to address illegal activity and protect national security. The safety and security benefits described in this section are consistent with the FAA's responsibilities to assist law enforcement agencies in their efforts to enforce laws related to regulation of controlled substances, to the extent consistent with aviation safety,[20] and to prescribe regulations necessary for safety in air commerce and national security.[21]

Federal, State, and local law enforcement and national security agencies have expressed their desire for new regulations to reduce and address the security threats associated with illegal or threatening UAS operations as well as the ability to discriminate between compliant and non-compliant operations. The FAA recognizes the increasing availability and potential use of UAS for illegal activities such as the carrying and smuggling of controlled substances, illicit drugs, and other dangerous or hazardous payloads; the unlawful invasion of privacy; illegal surveillance and reconnaissance; the weaponization of UAS; sabotaging of critical infrastructure; property theft; disruption; and harassment. The misuse of UAS for these purposes presents a direct threat to public safety. Such misuse also presents a hazard to safety in air commerce. Such risks are multiplied with the increasing sophistication of technology, the availability of UAS equipment, and the proliferation of UAS operations across the airspace of the United States.

Unmanned aircraft operators who know they cannot easily be identified are more likely to engage in careless, reckless, or dangerous behavior because they believe they will not be caught. These operators could engage in evasive maneuvering to avoid pursuit, violate airspace restrictions, engage in unauthorized night or BVLOS operations, fly too close to other aircraft,

[18] *https://utm.arc.nasa.gov/docs/2018-UTM-ConOps-v1.0.pdf*

[19] *https://www.faa.gov/uas/programs_partnerships/integration_pilot_program/; https://www.faa.gov/uas/programs_partnerships/completed/; http://www.assureuas.org/projects/detectandavoid.php*

[20] 49 U.S.C. 40101(d).

[21] 49 U.S.C. 44701(a)(5).

or operate in weather conditions beyond the capability of the unmanned aircraft or the person flying it. Such behavior could create severe safety hazards not only to other manned and unmanned aircraft in the surrounding airspace, but also to persons and property on the ground.

Additionally, UAS operators that do not comply with applicable law create a unique security challenge. On average, six sightings of UAS allegedly conducting unauthorized operations are reported to the FAA each day. Additionally, based on information provided by other U.S. Government agencies, there may be many additional UAS sightings involving unauthorized or illegal operations not reported to the FAA. Although collisions with aircraft are rare, there have been two confirmed unmanned aircraft collisions with manned aircraft: an Army Blackhawk helicopter in New York City in September 2017, and a small twin-engine passenger aircraft approaching Quebec City's Jean Lesage International Airport in October 2017. In all of these circumstances, remote identification could have enabled immediate identification of the UAS and enabled law enforcement to find the location of the control station for near real-time response and investigation.

Owners of critical infrastructure, airports, and venues for mass gatherings have expressed concern over the security of their facilities after sightings of UAS of unknown identity and intent. Many sightings are at night, when it may be more difficult to see and identify the unmanned aircraft or find the operator. Owners and facility managers of sports stadiums and other open-air venues are particularly concerned, given the concentration of people present during an event. Malicious UAS activities designed to disrupt and gain media attention are a distinct threat with the potential to inflict delays, fear, injuries, and significant economic losses across a variety of critical infrastructure sectors, including airports, public facilities, and energy production infrastructure.

On April 11, 2019, numerous spectators visually spotted a UAS operating during a Major League Baseball game.[22] Although law enforcement were able to eventually identify the operator within 24 hours due to a municipally-owned detection system, remote identification would likely have allowed them to find the operator and control station much more quickly and address the issue in real time. After law enforcement confiscated the UAS involved in the April 2019 incident and were able to review its flight log, they learned that the operator had flown over a previous World Series game at the same stadium—violating an FAA Temporary Flight Restriction and numerous safety regulations.

A UAS that was not approved to operate over people was used to drop pamphlets over large crowds outside a concert venue and a university event in May, 2019, in Sacramento, California.[23] This event was similar to two incidents in 2017 when a UAS was used to drop leaflets at two California National Football League games.[24] Although security and law enforcement personnel at the stadium used rudimentary tactics to eventually identify the accused operator, the lack of remote identification made real-time location of the operator impossible.[25] Security professionals have raised concerns that unmanned aircraft that have not been determined to be safe to fly over a large gathering of people may pose a safety hazard, and a UAS dropping objects could potentially pose a greater threat by releasing hazardous substances or creating a stampede of frightened spectators fleeing the area. Although social media postings helped identify the operator in some cases, such information rarely helps law enforcement officers address a potential threat in real time.

Multiple pilot reports of a UAS approximately 10 miles away from Newark Airport led to a disruption in arrivals in January 2019 that impacted other airports on the East Coast for several hours.[26] The more than 30-hour disruption of flights at London's Gatwick Airport in December 2018,[27] as well as brief disruptions at airports in Dubai,[28] Dublin,[29] and Frankfurt [30] within the last year, further demonstrate the potential for significant operational and financial impact from the presence of an unauthorized UAS in and around an airport. UAS operators have not been identified in any of these airport events. Remote identification of UAS would potentially prevent disruptions such as these by enabling real time action by the FAA, airport facilities, and law enforcement.

Remote identification would also aid in preventing terrorist attacks. Recent reports in the news including the Islamic State of Iraq and Ash-Sham's modifications of commercial UAS,[31] the assassination attempt of Nicolás Maduro in Venezuela,[32] a foiled plot in the United Kingdom to fly an unmanned aircraft into an airliner,[33] and a bomb-laden unmanned aircraft flown by Huthi forces and detonated over a military parade in Yemen [34] illustrate the ways in which UAS may be used to threaten life, critical infrastructure, and national security. Remote identification of UAS would enable national security agencies and law enforcement to quickly identify potential threats and act to prevent such incidents.

The use of UAS to smuggle contraband into correctional facilities is also increasingly common.[35] Even inexpensive consumer-grade UAS models have sufficient payload and technical capabilities to carry illicit and dangerous items over prison walls. Recent efforts by law enforcement, for example, have included the investigation and prosecution of an individual who illegally operated a consumer-grade UAS with the intent to deliver contraband (marijuana) into a

[22] *https://www.usatoday.com/story/sports/mlb/redsox/2019/04/13/drone-fenway-park-juvenile/3457190002/.* Accessed June 11, 2019.

[23] *https://www.newsweek.com/drone-used-drop-nazi-leaflets-ariana-grande-concert-sacramento-bites-bridge-1414933.* Accessed June 11, 2019.

[24] *https://www.justice.gov/usao-ndca/pr/sacramento-area-resident-charged-flying-drone-over-nfl-games-violation-national-defense.* Accessed June 10, 2019.

[25] Id.

[26] *https://www.washingtonpost.com/transportation/2019/01/22/drone-activity-halts-air-traffic-newark-liberty-international-airport/?noredirect=on&utm_term=.c0e920a9e756.* Accessed June 11, 2019.

[27] *https://www.theguardian.com/uk-news/2018/dec/21/gatwick-airport-reopens-limited-number-of-flights-drone-disruption.* Accessed June 11, 2019.

[28] *http://www.digitaljournal.com/tech-and-science/technology/q-a-recent-airport-shutdowns-need-drone-interdiction-technology/article/543680.* Accessed June 11, 2019.

[29] *https://dronelife.com/2019/02/22/flights-were-grounded-at-dublin-airport-after-another-drone-sighting/.* Accessed June 11, 2019.

[30] *https://www.ecnmag.com/news/2019/03/drone-sightings-interrupt-germanys-frankfurt-airport.* Accessed June 10, 2019.

[31] *https://ctc.usma.edu/app/uploads/2018/07/Islamic-State-and-Drones-Release-Version.pdf.* Accessed June 11, 2019.

[32] *https://www.bbc.com/news/world-latin-america-45073385.* Accessed June 9, 2019.

[33] *https://www.dailystar.co.uk/news/latest-news/724185/Terror-drone-plot-Britain-UK-spies-foil.* Accessed June 11, 2019.

[34] *https://www.reuters.com/article/us-yemen-security/houthi-drones-kill-several-at-yemeni-military-parade-idUSKCN1P40N9.* Accessed June 11, 2019.

[35] *https://www.washingtonpost.com/local/prisons-try-to-stop-drones-from-delivering-drugs-porn-and-cellphones-to-inmates/2016/10/12/645fb102–800c-11e6–8d0c-fb6c00c90481_story.html?utm_term=.22b0427db4d0.* Accessed June 11, 2019.

Georgia state prison. The prosecution ultimately resulted in a guilty plea in the Middle District of Georgia to a charge of operating an aircraft eligible for registration knowing that the aircraft is not registered to facilitate a controlled substance offense. The defendant received a sentence of 48 months in prison.[36] Remote identification will assist law enforcement in their efforts to find and stop operators who attempt to engage in similar conduct.

Four Federal departments [37] have the authority to deploy counter-UAS systems to detect and mitigate credible threats posed by UAS.[38] Remote identification of UAS would provide these departments with increased awareness of UAS operations conducted across certain geographical areas of interest. That information would aid the determination of whether UAS represent a threat that must be met with counter-UAS capabilities. In particular, remote identification would provide these departments with crucial information about the owner of the UAS, and the control station's location in near real-time, supplementing and enriching information obtained via UAS detection capabilities. The FAA believes that the ability to identify the owner and the location of the control station would help these Federal agencies to more accurately assess risk and take action commensurate with that risk.

In addition, certain public safety activities have been hampered by the inability to identify UAS and their locations. While there are numerous examples, in one case, a UAS interfered with a police helicopter assisting with a cliff rescue; [39] in another case, a UAS interfered with a police helicopter assisting a fire response.[40] In 2017, a helicopter performing security for the United Nations General Assembly struck an unmanned aircraft, causing more than $100,000 worth of damage to the helicopter.[41] Remote identification would enable the FAA, first responders, and law enforcement officers to more easily determine who is operating in the airspace, providing important information to help determine appropriate responses to ensure the safety and security of the airspace of the United States and the people on the ground.

Although Federal, State, and local law enforcement agencies are responsible for the investigation and prosecution of illegal activities, the FAA retains the regulatory and civil enforcement authority and oversight over aviation activities that create hazards and pose threats to the safety of flight in air commerce. Both safety and security enforcement are extremely difficult absent a remote identification requirement that enables the prompt and accurate identification of UAS and operators.

V. Related International Activities

The International Civil Aviation Organization (ICAO) does not prescribe any remote identification equipage for UAS. However, as of the date of publication of this proposed rule, ICAO advisory groups are developing material addressing UTM and UAS operations under instrument flight rules (IFR). The European Union, the Direction Générale de l'Aviation Civile (France Civil Aviation Authority), and the Civil Aviation Administration Denmark (Denmark Civil Aviation Authority) have also proposed various actions and advisory group activity for remote identification.

With the exception of Italy and Qatar, no individual ICAO-member Civil Aviation Authority has remote identification requirements for UAS. The Italian Civil Aviation Authority requires aircraft with a maximum takeoff weight of more than 55 pounds (25kg) to have certain equipage that transmits flight parameters and owner/operator data. Aircraft compliant with these requirements must also meet data storage standards. The Qatar Civil Aviation Authority requires that certain UAS operations be conducted with prescribed geo-fencing and electronic identification systems.

In May 2017, the European Commission published a notice of proposed amendment which included proposed rules for remote identification. That proposed amendment would require UAS to broadcast a unique physical serial number of the unmanned aircraft compliant with standard ANSI/CTA–2063, the geographical position of the unmanned aircraft and its height above the takeoff point, the direction and speed of the unmanned aircraft, and the geographical position of the unmanned aircraft takeoff point. During the first half of 2019, the European Commission finalized and adopted the following rules for remote identification: (1) The Commission Delegated Regulation (EU) 2019/945 of 12 March 2019 on unmanned aircraft systems and on third-country operators of unmanned aircraft systems, and (2) the Commission Implementing Regulation (EU) 2019/947 of 24 May 2019 on the rules and procedures for the operation of unmanned aircraft. The regulations address the design and operational requirements for unmanned aircraft and include a requirement for unmanned aircraft to be individually identifiable, but do not impose a European standard for remote identification.

As adopted, the regulations require the local broadcast of information about an unmanned aircraft in operation, including the marking of the unmanned aircraft to demonstrate conformity with the applicable requirements, so that the information may be obtained without physical access to the unmanned aircraft. The remote identification requirements adopted by the European Commission include the following:

(a) Allowing the upload of the UAS operator registration number in accordance with Article 14 of Implementing Regulation (EU) 2019/947 and exclusively following the process provided by the registration system;

(b) Ensuring, in real time during the whole duration of the flight, the direct periodic broadcast from the unmanned aircraft using an open and documented transmission protocol, of the following data, in a way that they can be received directly by existing mobile devices within the broadcasting range:

(1) the UAS operator registration number;

(2) the unique physical serial number of the unmanned aircraft compliant with standard ANSI/CTA–2063;

(3) the geographical position of the unmanned aircraft and its height above the surface or take-off point;

(4) the route course measured clockwise from true north and ground speed of the unmanned aircraft; and

(5) the geographical position of the remote pilot or, if not available, the take-off point.

(c) Ensuring that the user cannot modify the data mentioned under paragraph (b)(2) through (5).

VI. Aviation Rulemaking Committee

On July 15, 2016, Congress passed the FAA Extension, Safety, and Security Act of 2016 (Pub. L. 114–190). Pursuant to section 2202 of that Act, the Administrator and the Secretary were tasked with convening industry stakeholders to facilitate the development of consensus standards for

[36] *https://www.justice.gov/usao-mdga/pr/illegal-drone-operator-sentenced-attempting-drop-drugs-georgia-state-prison.*

[37] Department of Defense, Department of Energy, Department of Homeland Security, and the Department of Justice.

[38] 10 U.S.C. 130i; 50 U.S.C. 2661; 6 U.S.C. 124n.

[39] *https://www.mercurynews.com/2017/01/30/pacifica-drone-operator-arrested-for-interfering-with-helicopter-rescue-mission/.*

[40] *https://www.nbcwashington.com/news/local/College-Park-Man-Arrested-For-Flying-Drone-Near-5-Alarm-Fire-Monday-420369903.html.*

[41] *https://www.reuters.com/article/us-usa-military-drone/u-s-probing-collision-between-civilian-drone-army-helicopter-idUSKBN1CA1Z0.*

remotely identifying operators and owners of UAS and associated unmanned aircraft. As part of the standards development, the Administrator was directed to consider: (1) Requirements for remote identification of UAS; (2) requirements for different classifications of UAS; and (3) the feasibility of the development and operation of a publicly accessible online database of unmanned aircraft and operators, and criteria for exclusion from the database.

To comply with the Congressional mandate, on May 4, 2017, the Administrator chartered the Unmanned Aircraft Systems (UAS) Identification (ID) and Tracking Aviation Rulemaking Committee (ARC) (UAS–ID ARC) to inform the FAA on technologies available for remote identification and tracking of UAS and to make recommendations for how remote identification and tracking could be implemented.[42] The FAA charged the UAS–ID ARC with the following three objectives:

- Identify, categorize, and recommend available and emerging technology for the remote identification and tracking of UAS.
- Identify the requirements for meeting the security and public safety needs of the law enforcement, homeland defense, and national security communities for the remote identification and tracking of UAS.
- Evaluate the feasibility and affordability of available technical solutions, and determine how well those technologies address the needs of the law enforcement and air traffic control communities. Develop evaluation criteria and characteristics for making decisions, and rate the available technical solutions provided.

The Administrator was also tasked with submitting a report to Congress regarding any standards developed and issuing regulations based on the standards developed. On June 30, 2017, the Administrator sent a letter to the Chairman of the Commerce, Science, and Transportation Committee detailing the FAA's considerations and efforts in supporting the development and implementation of Remote ID standards.

A. ARC Recommendations Final Report

The members of the UAS–ID ARC were organized into working groups. Working Group One (WG1) was tasked with identifying, categorizing, and recommending available and emerging technologies for the remote identification and tracking of UAS. WG1 identified and analyzed eight viable technology solutions, falling into two broad categories: (1) Direct broadcast solutions; and (2) network publishing solutions.[43] A detailed discussion of the eight viable technology solutions, as well as tables summarizing WG1's analysis of those solutions can be found in the ARC Recommendations Final Report (Recommendations Report), available in the docket for this rulemaking.

Working Group Two (WG2) was tasked with identifying the requirements for meeting the security and public safety needs of the law enforcement, homeland defense, and national security communities for the remote identification and tracking of UAS. WG2 identified two general categories of UAS ID and tracking needs: (1) Incident investigation; and (2) active monitoring of heightened awareness areas. To achieve the goals of both categories, WG2 determined that all UAS meeting certain threshold requirements would need to be tracked, whether passively or actively, from commencement to termination of each operation.[44] WG2 further concluded that information regarding the position of the aircraft, the location of the control station, and the identity of the remote pilot would help maintain a safe and secure environment for the general public and public safety officials.

The working groups presented their findings and conclusions to the full UAS–ID ARC for consideration in making its recommendations. The UAS–ID ARC submitted its Recommendations Report to the FAA on September 30, 2017. Although some decisions were not unanimous, the ARC reached general agreement on many of its recommendations.[45]

1. Applicability of Remote ID and Tracking Requirements

In its Recommendations Report, the ARC presented two options for an applicability threshold for the ID and tracking requirements and recommended the FAA give due consideration to both of those options.

Option 1: All UAS are required to comply with remote identification and tracking requirements except under any of the following circumstances:

- The unmanned aircraft is operated within visual line of sight of the remote pilot and is designed to not be capable of flying beyond 400 feet of the remote pilot.[46]
- The unmanned aircraft is operated in compliance with 14 CFR part 101, unless the unmanned aircraft:
  - Is equipped with advanced flight systems technologies that enable the aircraft to navigate from one point to another without continuous input and direction from the remote pilot.
  - Is equipped with a real-time downlinked remote sensor that provides the remote pilot the capability of navigating the aircraft beyond visual line of sight of the remote pilot.
- The UAS is operated under ATC and contains the equipment associated with such operations (including ADS–B, transponder, and communication with ATC).
- The UAS operation is exempt from ID and tracking requirements by the FAA (*e.g.,* for the purposes of law enforcement, security or defense, or under an FAA waiver).

Option 2: UAS with either of the following characteristics are required to comply with remote identification and tracking requirements:

- Ability of the aircraft to navigate between more than one point without direct and active control of the pilot.
- Range from control station greater than 400 feet and real-time remotely viewable sensor.

The ARC also recommended that, regardless of which option for applicability the FAA chooses, UAS operating under the following circumstances be exempt from the remote identification and tracking requirement:

- The UAS is operated under ATC and contains the equipment associated with such operations (including ADS–B, transponder, and communication with ATC).
- The UAS operation is exempt from ID and tracking requirements by the

[42] The UAS–ID ARC was composed of 74 members representing aviation community and industry member organizations, law enforcement agencies and public safety organizations, manufacturers, researchers, and standards bodies that are involved in the promotion and production of UAS and in addressing security issues surrounding the operation of UAS.

[43] The eight viable technology solutions WG1 identified are: (1) Automatic Dependent Surveillance Broadcast (ADS–B); (2) Low Power Direct RF; (3) Networked Cellular; (4) Satellite; (5) SW-based Flight Notification with Telemetry; (6) Unlicensed Integrated C2; (7) Physical Indicator; and (8) Visual Light Encoding.

[44] WG2 determined that UAS with either of the following characteristics should be required to comply with remote identification and tracking requirements: (1) Those that have the ability to navigate between more than one point without direct and active control of the pilot; or (2) those that have a range from control station greater than 400 feet and real-time remotely viewable sensor.

[45] Appendix D of the ARC's Recommendations Report contains dissenting opinions submitted by ARC members, as well as a chart showing a breakdown of how ARC members voted on the final report. The Recommendations Report is available in the docket for this rulemaking.

[46] The ARC noted that it is not intending to encompass drone racing at very low altitudes on a closed course that may be authorized by operation, by location, or some other mechanism.

FAA (*e.g.,* for the purposes of law enforcement, security or defense, or under an FAA waiver).

The ARC further recommended the FAA do the following regarding the applicability of remote identification and tracking requirements:

- Include a waiver mechanism in the remote identification and tracking rule.
- Apply the remote identification and tracking requirements to the remote pilot, not to the manufacturer of the UAS.
- Require manufacturers to label their products to indicate whether they are capable of meeting applicable remote identification and tracking requirements.
- Consider whether unmanned aircraft equipped with advanced flight system technologies that are strictly for safety purposes and that keep the aircraft within visual line of sight of the remote pilot, such as a ''return to home'' feature, should be exempt from remote identification and tracking requirements, provided the safety features cannot be readily altered or reprogrammed.

Some ARC members objected to both of the applicability options presented in the Recommendations Report, favoring instead a weight-based threshold for applicability, with remote identification and tracking requirements applying to any UAS or model aircraft weighing 250 grams or more. These members also argued that there should be no exemption from the remote identification and tracking requirements for unmanned aircraft operated in compliance with part 101 (*i.e.,* model aircraft).[47]

2. Method To Provide Remote ID and Tracking Information

The ARC recommended two methods for UAS to provide remote identification and tracking information: (1) Direct broadcast; and (2) network publishing to an FAA-approved internet-based database. With regard to direct broadcast capabilities, the ARC recommended the FAA adopt an industry standard for data transmission, which may need to be created, to ensure unmanned aircraft equipment and public safety receivers are interoperable, as public safety officials may not be able to equip with receivers for all possible direct broadcast technologies. With regard to network publishing, the ARC recommended that information held by Third Party Providers (TPP) or UAS Service Suppliers (USS) be governed by restrictive use conditions imposed on the TPP/USS related to the use and dissemination of any data and information collected.

3. Tiered Approach to Remote ID and Tracking Requirements

The ARC recommended the following tiered approach to direct broadcast and network publishing requirements:

- Tier 1—Direct broadcast (locally) or Network publish: UAS in this tier would be required to direct broadcast both ID and tracking information so that any compatible receiver nearby can receive and decode the ID and tracking data. If a network is available, network publishing to an FAA-approved internet-based database satisfies this requirement. A UAS would fall into Tier 1 if it does not qualify for an exemption from remote identification and tracking requirements (exempt UAS are referred to as Tier 0) and does not meet the conditions for Tier 2 or Tier 3. For example UAS conducting most part 107 operations would fit into Tier 1.
- Tier 2—Direct broadcast (locally) and Network publish: UAS in this tier would be required to broadcast (locally) ID and tracking data and network publish ID and tracking data to an FAA-approved internet-based database. An example of UAS that may fall into Tier 2 would be UAS that are conducting waivered operations that deviate from certain part 107 operating rules, and where the FAA determines that Tier 2 ID and tracking are required as a condition of the waiver.
- Tier 3—Flight under part 91 rules: UAS in this tier would have to adhere to the rules of manned aircraft as defined in 14 CFR part 91. This tier is intended for aircraft that are integrated into the manned aircraft airspace. An example of UAS that may fall into Tier 3 are those whose unmanned aircraft weighs above 55 pounds and operating BVLOS, in IFR conditions, or operating in controlled airspace.

4. Stages of Implementation of Remote ID and Tracking Rule

The ARC recommended the following three stages for implementing a remote identification and tracking rule:

- Pre-rule—Broaden UAS safety education efforts and continue the UAS detection pathway research with industry stakeholders.
- Before final rule is enacted—Work to scope standards needed to enable direct broadcast and network publishing technologies for implementing the remote identification and tracking requirement on new equipment and existing equipment; ensure that standards for ID and tracking technology move forward at a rapid pace; and work closely with industry stakeholders on developing the ideal architecture for the PII System.[48]
- After final rule enacted—Allow a reasonable grace period to carry out retrofit of UAS manufactured and sold within the United States before the final rule (with grace period ending) when retrofit options are inexpensive and easy to implement.[49]

5. Minimum Data Requirements for Remote ID and Tracking

The ARC recommended a set of minimum data requirements for remote identification and tracking of UAS. Under the ARC's recommendation, availability of the following types of data related to the unmanned aircraft or associated control station would be required: (1) Unique identifier of the unmanned aircraft; (2) tracking information for the UAS; and (3) identifying information of the UAS owner and remote pilot. Availability of the following types of data related to the unmanned aircraft or associated control station would be optional: (1) Mission type; (2) route data; and (3) operating status of the unmanned aircraft. The ARC also recommended that the specific data elements to be provided by the UAS operator should vary depending on the nature of the operation. Finally, the ARC recommended that some data elements be provided prior to flight (*e.g.,* via the internet), while other data elements be provided in real-time while the UAS is in flight.

6. ATC Interoperability

With respect to ATC interoperability with the remote identification and tracking system, the ARC recommended the following:

- The FAA should identify whether BVLOS operations would routinely occur without an IFR flight plan, and if so, under what operational conditions.
- Any proposal for using ADS–B frequencies in the solution for UAS ID and tracking would have to be analyzed for the impact on the performance of current and future Secondary Surveillance Radar (SSR), Airborne

[47] Section 336 of Public Law 112–95, the underlying authority for 14 CFR part 101 Subpart E- Special Rule for Model Aircraft, was repealed by section 349 of the FAA Reauthorization Act of 2018, Public Law 115–254.

[48] The ARC report defines ''PII System'' as follows: ''PII System includes processes and technology (direct broadcast or network publishing) that enables approved users to associate UAS ID with the FAA System of Records. This system would include the database where remote pilot/owner/operator PII [personally identifiable information] is housed for access by authorized users.''

[49] The FAA notes that the ARC only discussed establishing a grace period for implementation of remote identification. The ARC did not discuss or address grandfathering of existing UAS.

Collision Avoidance System (ACAS), and ADS–B.

• The UAS ID and tracking system should interoperate with the ATC automation such that target information from the ID and tracking ground system, including ID and position, can be passed to ATC automation.

• FAA automation should by default filter out UAS ID and tracking system targets from the ATC display that fall outside of adapted airspace deemed to be of interest to ATC.

• FAA automation and the UAS ID and tracking system should be able to display designated UAS targets of interest to ATC personnel.

7. Airports and Critical Infrastructure

The ARC recommended the FAA do the following related to airports and critical infrastructure:

• Incorporate implementation costs of critical infrastructure facilities into rulemaking analysis.

• Identify an approach and timeline to designating approved technologies for airports and critical infrastructure facilities, and address any legal barriers to implementing approved technologies.

• Provide guidance to airports on any impact or interference to safe airport operations including how UAS ID and tracking may impact definition of UAS Facility Maps, security procedures, and risk assessments of UAS operations.

8. Related Issues

Finally, the ARC identified related issues it determined could have an impact on the implementation of effective UAS ID and tracking solutions, and recommended the following for FAA's consideration:

• Access to data related to direct broadcast and network publishing—The FAA should implement three levels of access to the information that is either broadcast or captured and contained in the appropriate database: (1) Information available to the public (the unmanned aircraft unique identifier); (2) information available to designated public safety and airspace management officials (personally identifiable information (PII)); and (3) information available to the FAA and certain identified Federal, State, and local agencies (all relevant tracking data).

• PII—The United States government should be the sole keeper of any PII collected or submitted in connection with new UAS ID and tracking requirements.

• Governmental UAS Operations—The remote identification and tracking system should include reasonable accommodations to protect the operational security of certain governmental UAS operations.

B. FAA Response to ARC Report

The ARC was tasked with considering both identification and tracking of UAS; however, the ARC did not provide any specific recommendations related to tracking of UAS. The FAA has developed this proposed rule to require only the identification of UAS. Although the FAA is not proposing any requirements related to the use of remote identification information for tracking UAS, the FAA acknowledges that third parties could potentially track UAS operations in the airspace of the United States by developing systems that use information provided to Remote ID USS or through broadcasts. Similar third party applications exist today, such as FlightAware and Flightradar24, that track and display information about manned aircraft operations in the airspace of the United States.

Although there was general agreement that certain UAS operations should be excluded from a remote identification requirement, the ARC did not reach consensus on the applicability of such a requirement. The ARC's two recommended approaches would have provided for significant numbers of UAS without remote identification.[50] The FAA believes that there is a need to identify as many UAS as possible because a comprehensive approach increases the usefulness of a remote identification system. Moreover, some of the ARC's applicability recommendation hinged on whether the UAS in question would have certain sensor capabilities. After consideration, the FAA determined that the sensor capabilities of a particular UAS should not be a factor in determining whether the aircraft should have remote identification. UAS without sensor capabilities can still be operated in a manner that may pose a threat to public safety, national security, and the safety and efficiency of the airspace of the United States and therefore the FAA determined that this recommendation would not meet the objective of this proposed rule. Accordingly, the FAA is proposing that the majority of UAS should have remote identification, regardless of the sensors installed on the unmanned aircraft. However, the FAA acknowledges that remote identification is not necessary for certain UAS operations conducted in an FAA-recognized identification area.

The FAA acknowledges the dissenting opinion within the ARC regarding using weight as the sole determinant of whether an unmanned aircraft should be required to have remote identification. While an exclusion to any remote identification requirement based on weight or operational performance could make sense from a law enforcement and security perspective, the same cannot be said from the perspective of the overall safety of the airspace of the United States. Because remote identification could be used in the near term to provide situational awareness, and because remote identification would ultimately be a foundational element of a UTM system, it is important for most UAS operated in the airspace of the United States to comply with the remote identification requirements.

The FAA does not believe that weight alone should be the determining factor

[50] The ARC recommended the following options:

Option 1:

Except for those members who strongly favor a weight-based threshold for applicability and those members who strongly oppose an exemption for model aircraft operated in compliance with 14 CFR part 101 . . ., the ARC recommends that all UAS be required to comply with remote ID and tracking requirements except under the following circumstances:

1. The unmanned aircraft is operated within visual line of sight of the remote pilot and is not designed to have the capability of flying beyond 400′ of the remote pilot.

2. The unmanned aircraft is operated in compliance with 14 CFR part 101, unless the unmanned aircraft:

a. Is equipped with advanced flight systems technologies that enable the aircraft to navigate from one point to another without continuous input and direction from the remote pilot.

b. Is equipped with a real-time downlinked remote sensor that provides the remote pilot the capability of navigating the aircraft beyond visual line of sight of the remote pilot.

3. The UAS is operated under ATC and contains the equipment associated with such operations (including ADS–B, transponder, and communication with ATC).

4. The UAS operation is exempt from ID and tracking requirements by the FAA (*e.g.,* for the purposes of law enforcement, security or defense, or under an FAA waiver).

Option 2:

Except for those members who strongly favor a weight-based threshold for applicability . . ., the ARC recommends UAS with either of the following characteristics must comply with remote ID and tracking requirements:

1. Ability of the aircraft to navigate between more than one point without direct and active control of the pilot.

2. Range from control station greater than 400′ and real-time remotely viewable sensor.

The ARC further recommends that UAS operating under the following circumstances be exempt from the remote ID and tracking requirement:

• The UAS is operated under ATC and contains the equipment associated with such operations (including ADS–B, transponder, and communication with ATC).

• The UAS operation is exempt from ID and tracking requirements by the FAA (*e.g.,* for the purposes of law enforcement, security or defense, or under an FAA waiver).

for whether a UAS is required to comply with remote identification. UAS may be used in a wide variety of types of operations that may present a range of safety and security risks, regardless of the weight of the unmanned aircraft. The FAA believes that the remote identification requirement should be tied to the unmanned aircraft registration requirement because the FAA, national security agencies, and law enforcement agencies have a need to correlate remote identification and registration data. If an unmanned aircraft is required to be registered, or its owner chooses to register the unmanned aircraft, then the UAS would have to comply with remote identification. Accordingly, under current regulations unmanned aircraft weighing less than 0.55 pounds would not be required to comply with the remote identification requirements unless they are registered under part 47 or part 48 (*e.g.,* to comply with the operating requirements of part 91 or part 107). Changes to the registration requirements in part 47 or part 48 (*e.g.,* to require unmanned aircraft weighting less than 0.55 pounds to register) would have a direct impact on which UAS would have to comply with remote identification.

The FAA does not agree with the recommendation that model aircraft, referred to throughout this proposal as limited recreational operations for consistency with 49 U.S.C. 44809, should be excluded from the remote identification requirements. Unmanned aircraft used in limited recreational operations required to register under part 47 or part 48 would be subject to the proposed remote identification requirement. The agency is, however, proposing a means for such aircraft to operate without remote identification equipment. Under the proposed rule, UAS would be permitted to operate without remote identification equipment if they are operated within visual line of sight and within an FAA-recognized identification area.

The FAA agrees with the ARC's recommendation for the methods of transmission for the remote identification message elements. The FAA agrees that requiring the broadcasting of messages directly from the unmanned aircraft and the transmission of messages over the internet is an appropriate approach because it provides a more complete picture of unmanned aircraft in the airspace of the United States. Moreover, this would support the development of UTM. Thus, the FAA proposes to require both the broadcast of the message elements and their transmission through the internet to a Remote ID USS for standard remote identification UAS.

Regarding the ARC's recommendation for a tiered approach for remote identification, the FAA agrees that some UAS, depending on their capabilities, may meet the intent of this proposed rule by only transmitting through the internet to a Remote ID USS. To accommodate these types of UAS, the FAA is proposing that a limited remote identification unmanned aircraft that is designed to operate no more than 400 feet from its control station be required to transmit information regarding the control station only. Standard remote identification UAS would be required to broadcast and transmit the remote identification message elements for both the unmanned aircraft and the control station.

The ARC identified a range of 400 feet as the maximum distance that an unmanned aircraft could be operated from its control station where a law enforcement officer could reasonably locate and identify the operator of the unmanned aircraft by visual means only. The FAA agrees with the ARC determination that 400 feet is a reasonable distance for visually associating an unmanned aircraft with the location of its control station, and has included a 400-foot range limitation in the requirements for limited remote identification UAS.

The FAA agrees with some of the ARC's recommendations related to the transmission of message elements. Specifically, the FAA agrees that a unique identifier should be broadcast or transmitted, as appropriate, and be part of the unmanned aircraft's Certificate of Aircraft Registration. The FAA also agrees that the location of the unmanned aircraft and the control station should be broadcast or transmitted, as appropriate. However, the FAA is not proposing for the identity of the owner of the UAS to be included in the message elements, because the message elements would generally be available to the public. The message elements that the FAA is proposing are the minimum necessary to achieve the FAA's safety and security goals while avoiding potential privacy concerns. UAS owner information would still be available to the FAA and law enforcement because the FAA would retain the ability to correlate the unmanned aircraft's unique identifier with the unmanned aircraft's registration information.

The ARC also recommended a number of message elements that could be optionally transmitted. The FAA concurs with the ARC's recommendation to include the emergency status of the UAS, which could include lost-link or downed aircraft, as part of the remote identification message elements, and therefore proposes to include it as a requirement of the proposed rule. This proposed rule does not preclude broadcasting or transmitting information, as appropriate in addition to the minimum required message elements, although any additional message elements would have to be incorporated as a part of an FAA-accepted means of compliance.

The FAA disagrees with the ARC's recommendation that the identifying information required to be transmitted would be based on the type of operation. The FAA believes that all of the message elements proposed should be broadcast or transmitted, as appropriate, by a UAS from takeoff to landing, regardless of the type of operation being conducted. By requiring the broadcast or transmission, as appropriate, of all message elements from takeoff to landing, the FAA is able to garner basic remote identification information that contributes to the development and operation of comprehensive UTM and ultimately enhances the safety and security of the airspace of the United States.

The FAA agrees with the ARC that the UAS operator should be responsible for ensuring that his or her UAS complies with the remote identification requirements. Ultimately, it would be the operator's responsibility to operate in compliance. That said, the FAA understands that responsibility for meeting UAS design and production requirements should not fall on UAS operators. Accordingly, the FAA is proposing requirements for UAS producers to ensure that UAS are designed and produced in a way that ensures reliable functionality of the remote identification equipment with minimal additional responsibilities for the UAS operator.

The FAA concurs with the ARC's recommendation that manufacturers label UAS to indicate that they comply with the requirements being proposed in this rule, and is proposing that all producers of standard remote identification UAS and limited remote identification UAS label their unmanned aircraft accordingly. The FAA believes that a labeling requirement would communicate to prospective operators, after-market purchasers, law enforcement, and other persons whether a UAS complies with

the remote identification requirements.[51]

VII. Terms Used in This Proposed Rule

The FAA is proposing to define a number of new terms to facilitate the implementation of remote identification of UAS.

In part 1, definitions and abbreviations, the FAA is proposing to add definitions of unmanned aircraft system, unmanned aircraft system service supplier, and visual line of sight to § 1.1.

The FAA is proposing that *unmanned aircraft system (UAS)* means an unmanned aircraft and its associated elements (including communication links and the components that control the unmanned aircraft) that are required for the safe and efficient operation of the unmanned aircraft in the airspace of the United States.

The FAA is proposing that *unmanned aircraft system service supplier* means a person qualified by the Administrator to provide aviation-related services to unmanned aircraft systems.

The FAA is proposing that *visual line of sight* means the ability of a person manipulating the flight controls of the unmanned aircraft or a visual observer (if one is used) to see the unmanned aircraft throughout the entire flight with vision that is unaided by any device other than corrective lenses.

The FAA recognizes that the term visual line of sight is already used in part 107. The term is specifically described in § 107.31(a). However, the FAA believes that providing a definition in § 1.1 would ensure that the term is used consistently throughout all FAA regulations. Therefore, the FAA is proposing to use the description of visual line of sight contained in § 107.31, without the part 107-specific regulatory requirements, as the basis for the definition of the term visual line of sight in § 1.1.[52] To account for the use of the term in proposed part 89 and the potential use of the term in other parts of 14 CFR, the FAA is proposing to include a slightly modified version of the description used in part 107. Part 107 remote pilots and visual observers would still be bound by the specific provisions of § 107.31 absent a waiver.

In § 1.2, abbreviations and symbols, the FAA is proposing to add the abbreviation *USS* to mean an Unmanned Aircraft System Service Supplier.

The FAA is proposing to add a new part 89, Remote Identification of Unmanned Aircraft Systems, to title 14, chapter I, subchapter F, Air Traffic and General Operating Rules. In part 89, § 89.1, the FAA is proposing to include the following definitions:

Amateur-built unmanned aircraft system means an unmanned aircraft system the major portion of which has been fabricated and assembled by a person who undertook the construction project solely for their own education or recreation.[53]

Broadcast means to send information from an unmanned aircraft using radio frequency spectrum.

Remote ID USS means a USS qualified by the Administrator to provide remote identification services.

VIII. Applicability of Remote Identification Requirements

The FAA is proposing to require a new set of technologies, systems, and guidelines for the remote identification of UAS. The proposal includes requirements that apply to operators of UAS, requirements for the development of means of compliance, and requirements that apply to designers and producers of UAS.

The FAA is proposing to add a new part 89, Remote Identification of Unmanned Aircraft Systems, to 14 CFR, chapter I, subchapter F, Air Traffic and General Operating Rules. The operating requirements in subpart B of part 89 would apply to persons operating unmanned aircraft registered or required to be registered under part 47 or part 48. The FAA is proposing to tie the remote identification requirements to the registration requirements because the remote identification data broadcast or transmitted from a UAS is meant to be correlated to the registration data of such UAS. To facilitate the correlation of data, the FAA proposes certain changes to the registration requirements in parts 47 and 48, which are discussed in section IX of this preamble. Specifically, the FAA proposes to revise part 48 to require the individual registration of unmanned aircraft.[54] The FAA also proposes to require that all registrations of unmanned aircraft with remote identification include the serial number assigned by the producer of the unmanned aircraft. The serial number would be used to provide a unique identity to each unmanned aircraft for remote identification purposes.

The operating requirements of the proposed rule would also apply to persons operating foreign civil unmanned aircraft in the United States and to persons operating UAS exclusively within FAA-recognized identification areas. The operating requirements of the proposed rule would not apply to aircraft of the Armed Forces of the United States because these aircraft are not required to be registered under part 47 or part 48.

The design and production requirements in subpart F of proposed part 89 would apply to persons responsible for the design and production of UAS produced for operation in the United States. The design and production requirements would not, however, apply to the following UAS, unless they are intentionally produced with remote identification (*i.e.,* a standard remote identification UAS or limited remote identification UAS): amateur-built UAS and UAS of the United States Government. Producers of UAS weighing less than 0.55 pounds (current weight threshold for requirement to register) may, but would not be required to, comply with the proposed remote identification design and production requirements.

The FAA anticipates that industry stakeholders would develop means of compliance (which may include consensus standards) that UAS designers and producers would use to comply with the requirements of this proposed rule. Any person or entity could submit a means of compliance for acceptance by the FAA if it meets the requirements in subpart D of proposed part 89.

IX. Changes to Registration Requirements

Under the proposed rule, persons operating unmanned aircraft registered or required to be registered under part 47 or part 48, would have to comply

[51] In addition to the ARC feedback, during the development of this NPRM, the FAA received two letters specific to remote identification of UAS, one from the Academy of Model Aeronautics and the other from the Small UAV Coalition. Both letters provided their respective organizations' views on the policies that the FAA should propose in this rule. Neither of these letters were considered in the development of this rule. Both letters have been placed in the docket for this rulemaking.

[52] In relevant part, 14 CFR 107.31(a) describes visual line of sight as with vision that is unaided by any device other than corrective lenses, the remote pilot in command, the visual observer (if one is used), and the person manipulating the flight control of the small unmanned aircraft system must be able to see the unmanned aircraft throughout the entire flight in order to: (1) Know the unmanned aircraft's location; (2) Determine the unmanned aircraft's attitude, altitude, and direction of flight; (3) Observe the airspace for other air traffic or hazards; and (4) Determine that the unmanned aircraft does not endanger the life or property of another.

[53] As currently proposed, amateur-built UAS would not include unmanned aircraft kits where the majority of parts of the UAS are provided to the operator as a part of the sold product.

[54] Currently, 14 CFR part 48 allows owners with UAS operated for limited recreational purposes to register multiple unmanned aircraft under a single registration number.

with the remote identification requirements of proposed part 89. The FAA is proposing to tie the remote identification requirements to the registration of unmanned aircraft because the FAA and law enforcement agencies need the ability to correlate remote identification information with registration data to obtain more complete information regarding the ownership of unmanned aircraft flying in the airspace of the United States. Aircraft registration requirements are the foundation for both identifying aircraft and for promoting accountability and the safe and efficient use of the airspace of the United States by both manned and unmanned aircraft. With limited exceptions, all aircraft are required to be registered under part 47 or part 48; therefore, nearly all UAS operating in the airspace of the United States would have to comply with the remote identification requirements, thereby enhancing the overall safety and efficiency of the airspace of the United States.

Parts 47 and 48 of title 14 of the Code of Federal Regulations implement the registration requirements codified in 49 U.S.C. 44101–44103. Additional statutory requirements address the registration of unmanned aircraft; specifically, 49 U.S.C. 44809(a)(8) requires unmanned aircraft used in limited recreational operations to be registered and marked in accordance with chapter 441 of Title 49 of the United States Code. Furthermore, under 49 U.S.C. 44809(f), the Administrator is not prohibited from promulgating rules relating to the registration and marking of unmanned aircraft including unmanned aircraft used in limited recreational operations.[55]

Under the current registration requirements, no person may operate an unmanned aircraft in the airspace of the United States unless it has been registered by its owner pursuant to part 47 or part 48, or unless the aircraft is excepted from registration. There are two exceptions to the registration requirements for unmanned aircraft: (1) Unmanned aircraft of the Armed Forces of the United States; and (2) most unmanned aircraft weighing 0.55 pounds or less on takeoff, including everything that is on board or otherwise attached to the aircraft. Small unmanned aircraft operating under 14 CFR part 91 and part 107 are required to register under part 47 or part 48 regardless of weight.

[55] Section 336 of Public Law 112–95, which prohibited the FAA from implementing new regulations on certain recreational UAS operations, was repealed by section 349 of the FAA Reauthorization Act of 2018, Public Law 115–254.

A. Registration Under Part 47

Registration under part 47 is required for:

(1) Unmanned aircraft weighing 55 pounds or more;

(2) small unmanned aircraft intended to be operated outside of the territorial airspace of the United States; and

(3) small unmanned aircraft registered through a trust or voting trust (*e.g.,* to meet U.S. citizenship requirements).

Registration under part 47 is available for:

(1) Any unmanned aircraft (including small unmanned aircraft) that needs—or desires—an N-number registration (*e.g.,* to operate outside the United States); or

(2) when public recording is needed for unmanned aircraft-related loans, leases, or ownership documents.

To register under part 47, the unmanned aircraft must not be registered under the laws of a foreign country, and must be:

(1) Owned by a citizen of the United States;

(2) owned by an individual citizen of a foreign country lawfully admitted for permanent residence in the United States;

(3) owned by a corporation not a citizen of the U.S. when the corporation is organized and doing business under U.S. Federal or State laws, and the aircraft is based and primarily used in the United States; or

(4) owned by the U.S. Government, or a State, or local governmental entity.

The registration process under part 47 is paper-based and commences with the filing of an Aircraft Registration Application (AC Form 8050–1) with the FAA Aircraft Registry. At a minimum, applicants must provide evidence of ownership (*e.g.,* a traditional bill of sale, a contract of conditional sale, a lease with purchase option, or an heir-at-law affidavit), provide a certification of eligibility for registration, and pay a registration fee. Additional documentation may be required, particularly for amateur-built aircraft and aircraft imported from foreign jurisdictions. Additional information required may include a builder certificate describing the type of aircraft and a comprehensive description of the aircraft (*e.g.,* make, model, serial number, engine manufacturer, type of engine, number of engines, maximum takeoff weight, and number of seats). Persons such as corporate registrants, trustees, and non-citizen corporations must file additional documentation evidencing their legal structures, authorities, and related data that supports registration. Aircraft previously recorded in foreign registries must file proof of deregistration. In the case of amateur-built aircraft, either the owner or builder must designate the aircraft model name and serial number.

Once an unmanned aircraft is registered, the FAA issues a Certificate of Aircraft Registration (AC Form 8050–3) to the aircraft owner. The FAA has clarified that, in the case of unmanned aircraft, the Certificate of Aircraft Registration may be maintained at the pilot's control station rather than on the unmanned aircraft and must be made available for inspection upon request.[56] The certificate expires three years after date of issuance.[57] A Certificate of Aircraft Registration may be renewed by submitting a renewal application and paying a renewal fee.

Unmanned aircraft registered under part 47 must comply with the identification and registration marking requirements in subparts A and C of 14 CFR part 45. Under part 45, the aircraft must display certain marks consisting of the Roman capital letter ''N'' (denoting U.S. registration) followed by the registration number of the aircraft. The N-number must be: (1) Painted on the aircraft or affixed to the aircraft by some other permanent means; (2) have no ornamentation; (3) contrast in color with the background; and (4) be legible.[58]

B. Registration Under Part 48

Part 48 provides a web-based aircraft registration process for small unmanned aircraft to facilitate compliance with the statutory requirement that all aircraft register prior to operation.[59] A small unmanned aircraft weighing less than 55 pounds on takeoff, including everything that is on board or otherwise attached to the aircraft, may be registered under either part 47 or part 48.

Owners of small unmanned aircraft used in civil operations (including commercial operations), limited recreational operations,[60] or public aircraft operations, among others, are

[56] See Memorandum to John Duncan, from Mark W. Bury, Assistant Chief Counsel for International Law, Legislation, and Regulations (August 8, 2014).

[57] Section 556 of the FAA Reauthorization Act of 2018 requires the Administrator to initiate a rulemaking to increase the duration of aircraft registrations for noncommercial general aviation aircraft to 7 years.

[58] See 14 CFR 45.21(c).

[59] See 80 FR 78593 (December 16, 2015).

[60] This proposal uses the term ''limited recreational operations'' when discussing registration requirements under part 48. Part 48 uses the term ''model aircraft'' to describe recreational UAS operations. The FAA considers that model aircraft under part 48 are consistent with the ''limited recreational operations'' described in 49 U.S.C. 44809, therefore ''limited recreational operations'' has been used throughout to ensure consistency of terminology with current statutory requirements.

eligible to register under part 48. Currently, unmanned aircraft may be registered in one of two ways: (1) Under an individual registration number issued to each aircraft; or (2) under a single registration number issued to an owner of multiple unmanned aircraft used exclusively for limited recreational operations.

If the owner of a small unmanned aircraft intends to use it at any point for a purpose other than exclusively for limited recreational operations as defined in 49 U.S.C. 44809, the owner must register that aircraft individually and obtain a unique registration number for the aircraft. The aircraft registration must include the: (1) Name of the applicant; (2) applicant's physical address; (3) applicant's email address; (4) aircraft manufacturer and model name; (5) aircraft serial number, if available; and (6) any other information required by the Administrator.

If the owner of multiple small unmanned aircraft intends to use the aircraft exclusively for limited recreational operations, part 48 currently allows the owner to register once and to obtain a single registration number that constitutes the registration number for all of the owner's small unmanned aircraft. This means that multiple aircraft may display the same registration number when the unmanned aircraft are used exclusively for limited recreational operations. Applicants for a single Certificate of Aircraft Registration for multiple unmanned aircraft must provide: (1) The applicant's name; (2) the applicant's physical address; (3) the applicant's email address; and (4) any other information required by the Administrator. This option does not require the applicant to provide the unmanned aircraft manufacturer, model, or serial number.

Once an unmanned aircraft is registered, the FAA issues a Certificate of Aircraft Registration, which contains a registration number composed of multiple alphanumeric characters. A part 48 registration number is not the traditional N-number issued under part 47.

Small unmanned aircraft registered under part 48 may not operate unless they display a unique identifier in a way that is readily accessible and visible upon inspection of the aircraft. The unique identifier must be either: (1) The registration number issued to an individual or the registration number issued to the aircraft by the Registry upon completion of the registration process; or (2) the small unmanned aircraft serial number, if authorized by the Administrator and provided with the application for Certificate of Aircraft Registration. Most commonly, the unique identifier displayed is the FAA registration number.

C. Issues With the Current Registration Requirements and Proposed Changes

The current registration requirements do not provide for aircraft-specific data of all aircraft, information fundamentally necessary for remote identification, due to the differing requirements of parts 47 and 48.

Part 47 requires the individual registration of aircraft and the submission of an aircraft's serial number as part of the application for a Certificate of Aircraft Registration. These requirements are consistent with the remote identification framework proposed in this NPRM because the FAA would be able to correlate the aircraft-specific registration data (*i.e.,* serial number) obtained under part 47 to the remote identification data which would have to be broadcast or transmitted by unmanned aircraft under the current proposal. This is not the case with the current registration requirements of part 48.

Currently, part 48 allows for registration of multiple unmanned aircraft used exclusively for limited recreational operations under a single Certificate of Aircraft Registration without requiring the applicant to submit the aircrafts' serial numbers.[61] This means that the FAA has no aircraft-specific data for aircraft operated under a single Certificate of Aircraft Registration. Second, part 48 requires the provision of an unmanned aircraft's serial number, only if available, and only if the aircraft is registered individually. This means that the FAA does not have a data set that includes the serial numbers of all unmanned aircraft registered under part 48 and cannot correlate the registration data to the remote identification data which would be broadcast or transmitted by unmanned aircraft under the proposed rule. Thus, the FAA believes that the current registration requirements of part 48 are not sufficient to support the remote identification framework proposed in this NPRM.

A change to the registration requirements of part 48 is therefore necessary to enable the FAA to gather all of the necessary data to support the unique identification of unmanned aircraft registered under part 48. The lack of aircraft-specific data for aircraft registered under part 48 inhibits the FAA and law enforcement agencies from correlating the remote identification data proposed in this rule with data stored in the Aircraft Registry. Thus, the FAA proposes to revise part 48 to require the individual registration of all small unmanned aircraft and the provision of additional aircraft-specific data. Owners of small unmanned aircraft would have to complete the registration application by providing aircraft-specific information in addition to basic contact information. This means that every small unmanned aircraft registered under part 48 would need to have its own Certificate of Aircraft Registration. To ease the financial burden on operators who previously registered multiple model aircraft under a single registration number, the FAA would explore ways to minimize the registration fee when multiple aircraft are registered at the same time.

Specifically, the proposed changes would include the removal of §§ 48.100(b) and 48.115, which currently allow small unmanned aircraft used exclusively as a model aircraft to be registered under a single Certificate of Aircraft Registration without unique identifying information. Sections 48.100(a) and 48.110, which require unique identifying information, would become the sole means for registration under part 48 and would be revised to reflect all of the requirements that apply to the individual registration of small unmanned aircraft under part 48. Conforming changes would be made throughout part 48 to reflect the removal of §§ 48.100(b) and 48.115 and the transition to a single form of registration under part 48.

The FAA believes the proposed revisions are necessary to implement the remote identification framework because individual aircraft registration under part 48 would allow the FAA to gather aircraft-specific data that is essential for remote identification. Furthermore, the proposed transition to an individual aircraft registration system under part 48 would harmonize these requirements with the individual aircraft registration requirements of part 47.

D. Proposed Changes to the Registration Requirements To Require a Serial Number and Telephone Number as Part of the Registration Process

As discussed in section XII.C.1 of this preamble, this proposed rule would require a unique identifier as part of the

[61] As of November 25, 2019, are currently 1,081,329 recreational flyers registered under part 48—but because these registrants do not currently register each individual UA the FAA does not have administrative data on the number or type of recreational UAs being flown. As a point of comparison, as of November 25, 2019, under part 48 there are also 417,663 UAs registered individually as non-model unmanned aircraft (largely part 107 operations).

message elements used to remotely identify UAS. A serial number is a unique number assigned to an aircraft—typically at the time of production—and does not change in case of a sale or transfer of ownership. The proposed revision of part 48 would require the provision of an unmanned aircraft's serial number at the time of registration. This proposed requirement is essential for the remote identification framework proposed in this NPRM. The serial number requirement would enable the FAA to correlate the data broadcast or transmitted by the UAS with the registration data in the Aircraft Registry to associate an unmanned aircraft with its registered owner. The requirement would also allow the FAA to distinguish one unmanned aircraft from another operating in the airspace of the United States and would facilitate the identification of non-registered unmanned aircraft flying in the airspace of the United States, which may warrant additional oversight or action by the FAA, national security agencies, or law enforcement agencies.

There has been little to no standardization regarding the issuance or use of serial numbers by UAS. The FAA believes that standardizing the issuance and use of serial numbers is necessary to successfully implement the remote identification requirements of the proposed rule. The standardization of the issuance and use of serial numbers would prevent a situation where two or more UAS are issued the same serial number. Thus, the FAA is proposing to add a new § 47.14 to require the owners of standard remote identification unmanned aircraft and limited remote identification unmanned aircraft registered under part 47 to list in the Certificate of Aircraft Registration the serial number issued by the manufacturer of the unmanned aircraft in accordance with the requirements of proposed part 89. According to the manufacturing requirements in proposed § 89.505, the serial number would have to comply with the ANSI/CTA–2063–A serial number standard.

The FAA is also proposing to revise § 48.100(a) to require a serial number for every small unmanned aircraft. Consistent with the proposed changes in part 47, § 48.100(a)(5) would require the owner of any standard remote identification unmanned aircraft or limited identification unmanned aircraft to list in the Certificate of Aircraft Registration the serial number issued by the manufacturer of the unmanned aircraft in accordance with the production requirements of part 89. Per the production requirements in proposed § 89.505, such serial number would have to comply with the ANSI/CTA–2063–A serial number standard.

Owners of amateur-built unmanned aircraft would have to comply with the serial number requirement in proposed § 48.100(a)(5) if the unmanned aircraft are designed and produced as standard remote identification unmanned aircraft or limited identification unmanned aircraft. The proposed revisions to § 48.100(a) would also require the owners of amateur-built unmanned aircraft to list in the Certificate of Aircraft Registration a manufacturer and model name of their choice.

Additionally, the FAA is proposing to update the registration information requirements to include one or more telephone number(s) for the applicant. Although registration data corresponds to the owner of the unmanned aircraft rather than the operator, the FAA believes that due to the nature and scope of most small UAS operations, it is reasonable to expect a significant number of unmanned aircraft owners to also be the operators of the aircraft or in close contact with the operators of the aircraft. Requiring owners of unmanned aircraft to provide their telephone number(s) as part of the registration process would assist FAA and law enforcement to disseminate safety and security-related information to the registrant in near real-time. This additional information would be retained by the FAA and only disclosed as needed to authorized law enforcement or Federal agencies.

E. Request for Comments Regarding Serial Number Requirements

The FAA acknowledges that some unmanned aircraft may not have serial numbers that comply with the ANSI/CTA–2063–A serial number standard. Some examples include unmanned aircraft manufactured prior to the compliance date of the final rule that follows this notice of proposed rulemaking (assuming the producer of the unmanned aircraft is unable to modify the aircraft or push an upgrade to assign an ANSI/CTA–2063–A compliant serial number), some amateur-built unmanned aircraft, and foreign-built unmanned aircraft with no serial numbers or with serial numbers that do not comply with ANSI/CTA–2063–A. Since these unmanned aircraft do not comply with the remote identification requirements for standard remote identification UAS or limited remote identification UAS, the proposed rule requires their operation be restricted to FAA-recognized identification areas. Accordingly, the FAA has not imposed a requirement for the owners of such unmanned aircraft to obtain an ANSI/CTA–2063–A compliant serial number and to list it in the Certificate of Aircraft Registration or the Certificate of Identification. The FAA welcomes detailed comments on whether and why it should require the owners of UAS without remote identification to have to obtain an ANSI/CTA–2063–A compliant serial number and to list it in the Certificate of Aircraft Registration or the Certificate of Identification and whether there would be any costs associated with obtaining a compliant serial number. The FAA also welcomes comments on whether the Agency should issue ANSI/CTA–2063–A compliant serial numbers to such aircraft when registered or re-registered by their owners.

F. Serial Number Marking

The FAA emphasizes that small unmanned aircraft owners are not required to affix the serial number to the exterior of the aircraft. However, nothing in the proposed regulation would preclude the owners from choosing to do so. The FAA envisions that producers may mark the exterior of unmanned aircraft with serial numbers that comply with the ANSI/CTA–2063–A serial number standard, and that such serial numbers could be used to meet the marking requirements of part 48, subpart C. This could alleviate the need to mark each UAS with the registration number. The FAA seeks specific comments on whether UAS producers should be required to affix the serial number to the exterior of all standard remote identification UAS and limited remote identification UAS. Please explain why or why not and provide data to support your response.

X. Operating Requirements for Remote Identification

A. Requirement To Broadcast or Transmit

Under the proposed rule, no person would be able to operate a UAS in the airspace of the United States unless the UAS has remote identification capability meeting the requirements of this proposed rule (*i.e.,* a standard remote identification UAS or limited remote identification UAS) or if the UAS has no remote identification equipment but is otherwise identified by operating exclusively within visual line of sight and within an FAA-recognized identification area.

The FAA is proposing to require all UAS with remote identification to broadcast or transmit the appropriate remote identification message elements from takeoff to landing. The agency is also proposing that no person would be

able to operate a UAS with remote identification unless the UAS is transmitting (for limited remote identification UAS) or transmitting and broadcasting (for standard remote identification UAS) the appropriate message elements. The remote identification message elements are described in greater detail in section XII.C of this preamble. Furthermore, the FAA proposes to prohibit the operation of UAS with remote identification if the remote identification equipment and functionality have been disabled without the authorization of the Administrator.

UAS would have to comply with the remote identification requirements in one of three ways, depending on the capabilities of the UAS. To help operators determine whether a particular UAS has remote identification, the FAA is proposing to require that all persons responsible for the production of standard remote identification UAS and limited remote identification UAS label the unmanned aircraft to indicate whether the UAS complies with the remote identification requirements of this proposed rule and whether the UAS is standard remote identification or limited remote identification. A person would therefore be able to determine what type of UAS they have and if it has remote identification capability simply by visual inspection of the unmanned aircraft.

1. Standard Remote Identification UAS

Standard remote identification UAS would be required to transmit certain message elements through the internet to a Remote ID USS (an FAA-qualified third party discussed in section XIV of this preamble) and to broadcast the same message elements directly from the unmanned aircraft using radio frequency spectrum in accordance with 47 CFR part 15, where operations may occur without an Federal Communications Commission (FCC) individual license. These message elements would include: The UAS Identification (either the unmanned aircraft's serial number or session ID); latitude, longitude, and barometric pressure altitude of both the control station and the unmanned aircraft; a time mark; and an emergency status code that would broadcast and transmit only when applicable.

A standard remote identification UAS would be required to broadcast and transmit the remote identification message elements from takeoff to landing. If the internet is available at takeoff, the standard remote identification UAS would have to connect to the internet and transmit the message elements through that internet connection to a Remote ID USS and would also be required to broadcast the message elements directly from the unmanned aircraft. If the internet is unavailable at takeoff, the standard remote identification UAS would only be required to broadcast the message elements directly from the unmanned aircraft. If the internet is available, but the UAS cannot connect to a Remote ID USS, the UAS would be designed such that it could not take off. This is discussed in more detail in section XII.D.6 of this preamble.

The FAA is proposing to define ''broadcast'' as sending information from an unmanned aircraft using radio frequency spectrum. Under the proposed rule, only standard remote identification UAS would be able to broadcast remote identification message elements. The reasons for prohibiting limited remote identification UAS from broadcasting message elements is explained in section XII.D.14 of this preamble.

A standard remote identification UAS that loses connection to the internet or that can no longer transmit to a Remote ID USS after takeoff would be able to continue its flight, as long as it continues broadcasting the message elements. If a standard remote identification UAS experiences an in-flight loss of broadcast capability, regardless of whether it is connected to a Remote ID USS, the operator would have to land the unmanned aircraft as soon as practicable. This is necessary because a loss of the broadcast capability is an indication of a remote identification equipment failure, whereas loss of connectivity to the internet or a Remote ID USS could be attributed to unavailability of a service outside the control of the UAS operator. In addition, a functioning broadcast capability is necessary in order for remote identification information to be available in areas that do not have wireless internet connectivity. For example, during a BVLOS operation, the unmanned aircraft could be operating over a rural area that does not have wireless internet connectivity, but, through the command and control link, the unmanned aircraft has connectivity with a control station that is in turn connected to the internet and transmitting to a Remote ID USS. If the unmanned aircraft is in a location that does not have wireless internet connectivity, then for any local third-party observers attempting to identify the unmanned aircraft the only accessible source of remote identification information would be the broadcast. To support compliance with this requirement, the FAA is proposing that standard remote identification UAS have a monitoring feature that would notify the person manipulating the flight controls of the UAS if the broadcast capability was lost.

The FAA expects that the proposed design and production requirements of this rule would facilitate a person's compliance with the proposed operating requirements (*e.g.,* transmission requirement). The FAA intends for compliance with the remote identification requirements to be simple and straightforward for individuals operating UAS produced in accordance with a current FAA-accepted means of compliance. For example, a standard remote identification UAS would automatically transmit and broadcast the message elements and its design would prevent it from taking off when the remote identification capability is not functioning. Under this rule, the remote identification capability would be considered not functioning when the equipment does not work or is unable to perform its intended function or when the remote identification message elements are not transmitted or broadcast in accordance with the requirements of the proposed rule. Under this proposed rule, all UAS with remote identification would be designed and produced such that the remote identification functionality is always enabled and cannot be disabled except as otherwise authorized by the Administrator. UAS with remote identification would be designed and produced to notify the person manipulating the flight controls of the UAS of any remote identification malfunctions, failures, or anomalies.

2. Limited Remote Identification UAS

Limited remote identification UAS are UAS that are designed and produced such that the aircraft is not capable of operating more than 400 feet from the control station and cannot broadcast the remote identification message elements identified in proposed § 89.305 or § 89.315. Under the proposed rule, persons operating limited remote identification UAS would be required to fly within visual line of sight at all times. Limited remote identification UAS would be required to connect to the internet and transmit the appropriate message elements through that internet connection to a Remote ID USS. Unlike standard remote identification UAS, if a limited remote identification UAS cannot connect to the internet or transmit through an internet connection to a Remote ID USS, the UAS would not be able to take off.

Again, unlike with standard remote identification UAS, if a limited remote identification UAS loses connectivity to the Remote ID USS in flight, the person manipulating the flight controls of the UAS would be required to land as soon as practicable. The limited remote identification UAS would not be able to continue its flight because it cannot broadcast remote identification message elements.

A limited remote identification UAS is not permitted to broadcast remote identification message elements using radio frequency spectrum because the broadcast function is only applicable to standard remote identification UAS. If remote identification broadcast capability is added to a limited remote identification UAS, it would not have been subject to the design and production requirements of this rule and could result in erroneous, non-compliant, or incorrectly formatted messages being broadcast, undermining the fundamental purposes of this rule. However, the proposal does not prohibit designers, producers, or operators from including a capability for limited remote identification UAS to broadcast information or data unrelated to remote identification, such as a camera feed or telemetry data.

The message elements for limited remote identification UAS would include: The UAS Identification (either the unmanned aircraft's serial number or session ID); latitude, longitude, and barometric pressure altitude of the control station; a time mark; and an emergency status code that would transmit only when applicable.

Table 4 provides a summary of the differences between standard remote identification UAS and limited remote identification UAS.

TABLE 4—SUMMARY OF DIFFERENCES BETWEEN STANDARD REMOTE IDENTIFICATION UAS AND LIMITED REMOTE IDENTIFICATION UAS

	Standard remote identification UAS	Limited remote identification UAS
Message elements		
UAS Identification (serial number or session ID)	YES	YES.
Unmanned aircraft:.		
Latitude and longitude, barometric pressure altitude:	YES	NO.
Control station:.		
Latitude and longitude, barometric pressure altitude:	YES	YES.
A time mark identifying the Coordinated Universal Time (UTC) time of applicability of a position source output.	YES	YES.
An indication of the emergency status of the UAS	YES	YES.
Connectivity prior to takeoff		
Internet and Remote ID USS	YES	YES.
Broadcast	YES	NO.
If, at takeoff, the UAS cannot connect to the internet	Broadcast	Do not take off.
If, at takeoff, the UAS is connected to the internet, but is not transmitting to a Remote ID USS.	Do not take off	Do not take off.
In-flight loss of remote identification		
If, during flight, the UAS loses the connection to the internet or stops transmitting to the Remote ID USS.	Broadcast	Land as soon as practicable.
If, during flight, the UAS loses its ability to broadcast the message elements.	Land as soon as practicable	N/A.
Range limitation		
Range limitation from control station	None; operation would have to comply with all other operating requirements.	Limited to operations within 400 feet of control station.
Broadcasting from the unmanned aircraft at any point		
Broadcast limitation	Standard remote identification unmanned aircraft must broadcast remote identification message elements.	Limited remote identification unmanned aircraft cannot broadcast remote identification message elements.

3. UAS Without Remote Identification

Under the proposed rule, the vast majority of UAS would be required to remotely identify. The FAA understands, however, that not all UAS would be able to meet this requirement. For example, some UAS manufacturers may be able to bring UAS produced before the compliance date of this rule into compliance, but others might not. In addition, certain amateur-built UAS might not be equipped with remote identification equipment. The FAA is proposing operating rules in § 89.120 to allow these aircraft to continue to operate without remote identification equipment. A UAS that would not qualify as either a standard remote identification UAS or a limited remote identification UAS would only be allowed to operate under two circumstances. The first circumstance is where the UAS operates within visual line of sight and within the boundaries of an FAA-recognized identification area. An FAA-recognized identification area is a defined geographic area where UAS without remote identification can operate. In the proposed § 89.120(a), the

phrase ''operated within an FAA-recognized identification area'' means that both the unmanned aircraft and the person manipulating the flight controls of the UAS would be required to be located within the FAA-recognized identification area from takeoff to landing. FAA-recognized identification areas are described in section XV of this preamble. Note that this operating exception from remotely identifying only applies to those UAS that do not have remote identification; anyone operating a standard or limited remote identification UAS would continue to be bound by the operating rules applicable to their UAS, even if he or she is located inside an FAA-recognized identification area during the flight.

The second circumstance in which a UAS that is not a standard remote identification UAS or limited remote identification UAS could be operated without remote identification is where the person operating the UAS has been authorized by the Administrator to operate the UAS for the purpose of aeronautical research or to show compliance with regulations. In this context, the FAA would consider aeronautical research to be limited to the research and testing of the unmanned aircraft, the control systems, equipment that is part of the unmanned aircraft (such as sensors), and flight profiles, or development of specific functions and capabilities for the UAS. Under this provision, producers and other persons authorized by the Administrator, would have the ability to operate UAS prototypes without remote identification exclusively for researching and testing the UAS design, equipment, or capabilities. This provision does not extend to any other type of research using a UAS.

Additionally, a person authorized by the Administrator would be permitted to conduct flight tests and other operations to show compliance with an FAA-accepted means of compliance for remote identification, or airworthiness regulations, including but not limited to flights to show compliance for issuance of type certificates and supplemental type certificates, flights to substantiate major design changes, and flights to show compliance with the function and reliability requirements of the regulations.

B. Prohibition From Using ADS–B To Satisfy Remote Identification Requirements

The FAA proposes to prohibit the use of ADS–B Out to meet remote identification requirements in this rule. The FAA determined that both the ADS–B message elements and the infrastructure required to receive the ADS–B message elements are incompatible with the current need for remote identification at lower altitudes. ADS–B does not provide information regarding the location of a UAS control station. Thus, it would not advance the FAA's need to associate a control station with the actual unmanned aircraft it controls. Further, because ADS–B receivers do not provide sufficient low altitude coverage, ADS–B Out would not align well with the FAA's vision for the development of UTM. Finally, the FAA determined that the use of ADS–B Out by UAS would generate undue signal saturation and would create an overall safety hazard for manned aircraft due to the potentially high numbers of UAS which may be operating in the airspace at any given time. For these reasons, the FAA is proposing in § 89.125 to prohibit ADS–B Out equipment from being used to comply with the remote identification requirements of part 89.

C. Internet Availability and Transmission to a Remote ID USS

The FAA is proposing to require standard remote identification UAS and limited remote identification UAS to connect automatically to the internet, when available, and transmit remote identification message elements through that internet connection to a Remote ID USS. The FAA is also proposing a related performance requirement for standard remote identification UAS and limited remote identification UAS to continuously monitor the connectivity to the internet and the transmission of remote identification message elements to a Remote ID USS and notify the person manipulating the flight controls of the UAS if that connection is lost or the UAS is no longer transmitting to the Remote ID USS. Because of this proposed performance requirement for the UAS, the person manipulating the flight controls of the UAS would be aware at all times of whether the UAS was connected to the internet and transmitting to a Remote ID USS.

The FAA believes an internet-based solution is appropriate, when the internet is available, because the internet is the largest, most multifaceted, and prevalent platform for data transmission. Under the proposed rule, the internet would be considered available if cellular or other forms of wireless internet connectivity such as Wi-Fi are available in an operational area with sufficient signal strength to maintain a connection between the UAS and the internet. UAS with remote identification would automatically connect to the internet when it is available, similar to how wireless devices, such as smart phones, connect automatically to the internet when there is sufficient signal strength and coverage.

If the internet is available but the operator's Remote ID USS is not working, the operator would be required to either connect to another Remote ID USS or the UAS would be restricted from taking off. In the unlikely event that all Remote ID USS become unavailable at the same time but the internet remains available, no standard or limited remote identification UAS would be able to take off. The FAA assumes this situation would be extremely unlikely. The FAA seeks public comment on whether there are ways to address this extremely unlikely situation within the framework of the rule as proposed.

After connecting to the internet, a standard remote identification UAS or limited remote identification UAS must transmit the remote identification message elements to a Remote ID USS. The FAA anticipates that there will be some Remote ID USS available to the general public and that others will be private. Under the proposed rule, a Remote ID USS would be considered available as long as that Remote ID USS provides remote identification services to the general public at the time the standard remote identification UAS or limited remote identification UAS is being operated. A private or restricted access Remote ID USS would be considered available only to UAS operators who receive remote identification services from that Remote ID USS. For example, if Company ABC sets up a private Remote ID USS to provide remote identification services exclusively to its fleet of UAS, then the private Remote ID USS would only be available to the UAS operators of Company ABC. In comparison, if Company XYZ sets up a Remote ID USS that can be accessed by the general public for remote identification services, then Company XYZ's Remote ID USS would be considered available to all operators of UAS flying in the airspace of the United States, irrespective of whether that access requires a monetary cost. The FAA is not proposing to establish specific requirements regarding Remote ID USS business models, (*e.g.,* charging fees, requiring user agreements, and requiring information from Remote ID USS users). The FAA believes that operators will choose a Remote ID USS that best meets their operational needs. The FAA further discusses some of its assumptions related to Remote ID USS business models in the accompanying

Regulatory Impact Analysis, where it assumes (while acknowledging significant uncertainty) the average publicly available Remote ID USS will charge $2.50 as a monthly subscription ($30 annually) cost to users of its service.

D. In-Flight Loss of Connectivity With a Remote ID USS or Loss of Functionality

The FAA foresees situations where the person manipulating the flight controls of a UAS would need to receive an indication that the connection to a Remote ID USS has been lost mid-flight. Under this proposal, standard remote identification UAS would be produced with the capability to both connect to the internet and, through that connection, transmit to a Remote ID USS and to broadcast. The broadcast capability provides continuous remote identification information and continues to provide remote identification when connectivity to the internet is lost or the unmanned aircraft is no longer transmitting to a Remote ID USS. If the connection to the internet or to a Remote ID USS is lost after takeoff, the person manipulating the flight controls would be allowed to continue operating the UAS as long as it is still broadcasting the remote identification message elements. If, however, a standard remote identification UAS loses its ability to broadcast the message elements, the person manipulating the flight controls of the UAS would be required to land the unmanned aircraft as soon as practicable. This is necessary because a loss of the broadcast capability is an indication of a remote identification equipment failure.

Because limited remote identification UAS cannot broadcast remote identification message elements, if the UAS loses connection to the internet or to a Remote ID USS, then the person manipulating the flight controls would have to land the unmanned aircraft as soon as practicable. The FAA considers this to be the safest course of action given that these operations would be conducted within visual line of sight and no more than 400 feet from the person manipulating the flight controls of the UAS.

Should the UAS remote identification equipment experience a loss of functionality or malfunction in flight, the FAA proposes in §§ 89.110(b) and 89.115(b) to require the person manipulating the flight controls of the UAS to land as soon as practicable. The FAA does not define the phrase ''land as soon as practicable'' and expects that the person manipulating the flight controls of the UAS will take steps to land in a safe manner. For instance, if the aircraft is still within visual line of sight, the safest option may be to keep the aircraft within sight to avoid other aircraft and return to the departure point. For a standard remote identification UAS operating BVLOS, the safest way to land may be to continue to the intended destination.

E. Valid Declaration of Compliance

The FAA is proposing to require persons responsible for the production of UAS with remote identification to declare that the UAS meet the minimum performance requirements of the proposed rule using an FAA-accepted means of compliance by submitting a declaration of compliance for acceptance by the FAA. A declaration of compliance is a document submitted to the FAA by the person responsible for the production of UAS with remote identification. It includes information required by the FAA to determine whether the person and the UAS comply with the remote identification requirements of the rule. The FAA is proposing in §§ 89.110(c)(1) and 89.115(c)(1) to prohibit a person from operating a UAS with remote identification unless its serial number is identified on an FAA-accepted declaration of compliance. The FAA would provide a list of all FAA-accepted declarations of compliance on its website to notify the public when its acceptance of a declaration of compliance is valid. The website would also identify declarations of compliance that have been rescinded. Section XIII.E.3 of this preamble discusses the rescission of a declaration of compliance.

F. Foreign Registered Civil Unmanned Aircraft Operated in the United States

In § 89.101(b), the FAA is proposing to apply the operational requirements of part 89 to persons operating foreign civil unmanned aircraft in the United States. These persons would have to comply with the remote identification requirements in § 89.105, which means that these persons would only be able to operate foreign civil unmanned aircraft in the United States that qualify as standard remote identification UAS, limited remote identification UAS, or that have no remote identification equipment but are operated within an FAA-recognized identification area.

The FAA must be able to correlate the remote identification message elements transmitted or broadcast by foreign civil unmanned aircraft operated in the United States against information that helps FAA and law enforcement identify a person responsible for the foreign civil unmanned aircraft. Where unmanned aircraft are registered in a foreign jurisdiction, the FAA may not have access to information regarding the unmanned aircraft or its registered owner. Thus, the FAA is proposing in § 89.130(a) to allow a person to operate foreign-registered civil unmanned aircraft in the United States only if the person submits a notice of identification to the Administrator. The notice would include the following information to allow the FAA to associate an unmanned aircraft to a responsible person:

(1) The name of the operator and, for an operator other than an individual, the name of the authorized representative providing the notice.

(2) The physical address of the operator and, for an operator other than an individual, the physical address for the authorized representative. If the operator or authorized representative does not receive mail at a physical address, a mailing address must also be provided.

(3) The physical address of the operator in the United States (*e.g.,* hotel name and address).

(4) One or more telephone number(s) where the operator can be reached while in the United States.

(5) The email address of the operator or, for an operator other than an individual, the email address of the authorized representative.

(6) The aircraft manufacturer and model name.

(7) The serial number of the aircraft.

(8) The country of registration of the aircraft.

(9) The registration number of the aircraft.

Once a person submits a notice of identification, the FAA would issue a confirmation of identification. Under § 89.130(c), a person operating a foreign-registered unmanned aircraft in the United States would have to maintain the confirmation of identification at the UAS' control station and would have to produce it when requested by the FAA or a law enforcement officer.

As specified in proposed § 89.130(b)(2), the filing of the notice of identification and the issuance of a confirmation of identification would not have the effect of U.S. aircraft registration.

The issuance of a confirmation of identification would not exempt any person from having to obtain the appropriate safety authority issued by the FAA or economic authority issued by the Department of Transportation [62] prior to conducting unmanned aircraft

[62] *https://www.faa.gov/uas/resources/foreign_operators/.*

operations in the airspace of the United States, if required for their particular operations.

Lastly, under proposed § 89.130(d), the holder of a confirmation of identification would have to ensure that the information provided under proposed § 89.130(a) remains accurate and is current prior to operating a foreign registered civil unmanned aircraft system in the United States.

G. Example Operating Scenarios

The FAA is providing these notional scenarios to provide examples of how the FAA envisions the proposed rule would apply to certain common situations.

1. Subscribing to a USS

Kim decides to give her daughter Emily a UAS for her birthday. Emily, excited to finally have her own UAS, eagerly unwraps the package so she can begin taking aerial selfies. Under FAA rules, Emily's drone must be registered and therefore comes with remote identification. The UAS will not take off unless it is connected to a Remote ID USS. In order to comply with the remote identification requirement, Kim researches FAA-qualified Remote ID USS on the FAA's website and decides to subscribe to Alpha USS, Inc. Emily's UAS was designed to pair with her smartphone and connect to the Remote ID USS through her smartphone's internet connection. After Emily's UAS connects to Alpha USS, she is able to start using her drone to take selfies.

2. Operating a Standard Remote Identification UAS

Patty has a photography business and has decided to purchase a UAS to take aerial photos for weddings and other events. She researched different types of UAS and their capabilities and determined that she needs a UAS that can operate more than 400 feet from its control station. Patty decides to buy a standard remote identification UAS. Because the UAS has standard remote identification, it is designed to: (1) Connect to the internet and transmit the remote identification message elements through that internet connection to a Remote ID USS; and (2) broadcast the same message elements directly from the unmanned aircraft.

Patty sees that the UAS she wants to buy has a label that says it is a standard remote identification UAS. Regardless, Patty checked the FAA's website to confirm that the UAS she is buying has a valid FAA-accepted declaration of compliance. Because the UAS was listed on the FAA website, the UAS meets the requirements of part 89. Patty intends to operate her UAS for business purposes, so the operations are subject to the operating rules in 14 CFR part 107, which require her to register the unmanned aircraft with the FAA. Patty goes online to the FAADroneZone [63] website, applies for, and is issued a Certificate of Aircraft Registration under part 48. As part of the application process, Patty submits her unmanned aircraft's serial number. Because Patty is required to register her unmanned aircraft under part 48, she is subject to the remote identification operating requirements in part 89.

Patty then subscribes online to Alpha, Inc., an FAA-qualified Remote ID USS. Her UAS is designed to connect to the internet by automatically pairing with her personal smart phone when the phone is running an application provided by Alpha USS. Each time Patty uses her UAS, it automatically transmits the standard remote identification UAS' remote identification message elements through that internet connection to Alpha USS. Patty chooses to use her unmanned aircraft's serial number for the UAS Identification message element, but in the future, she may instead choose to use a session ID assigned by Alpha USS.

Sometimes, Patty's UAS loses its internet connection while she is operating in rural areas; she can continue the operation as long as the unmanned aircraft is still broadcasting the remote identification message elements. During one operation, Patty's UAS indicated that, due to a malfunction, the unmanned aircraft was no longer broadcasting the message elements, at which point she landed the unmanned aircraft as soon as practicable.

During a different operation, Patty's UAS attempts to connect to Alpha USS at the time of takeoff, but Alpha's remote identification service is unavailable because Alpha's server is down. Patty's UAS can still connect to the internet through her smart phone and she discovers that an alternate FAA-qualified Remote ID USS, Bravo, Inc., is available. Patty's UAS connects to Bravo, Inc. and is able to fly her UAS. Patty's subscription with Alpha USS provides for a ''roaming'' feature that allows her to connect to other available USS free of charge so she can have uninterrupted service. If her subscription did not provide this roaming feature, Patty would have had to pay any associated fees directly to Bravo. This is because if any Remote ID USS is available, even if it is not the one she contracted with, her UAS is designed to connect to it through the internet. As long as she can connect to the internet, it is incumbent on Patty to connect to a USS. Only when the UAS cannot connect to the internet would the unmanned aircraft be able to take off while only broadcasting.

On another occasion, Patty is unable to connect to Alpha, Inc. at the time of takeoff due to a disruption in Alpha's service, but Bravo is also experiencing problems. There are no other publicly available Remote ID USS. Because Patty's UAS is designed not to take off when it has access to the internet but is not connected to a Remote ID USS, her unmanned aircraft would not take off. Her service would be interrupted until Alpha, Bravo, or another publicly available USS became available.[64]

3. Operating a Limited Remote Identification UAS

Charlie purchases a used UAS that looks like a spaceship. The UAS weighs more than 0.55 pounds and he intends to operate it outside his house for recreational purposes, such as filming his daughter's soccer games and entertaining his sons who love science fiction movies. The person who sold Charlie the UAS assures him it is remote identification compliant. Because the company responsible for production of the UAS was required to label the unmanned aircraft to indicate that it is remote identification compliant, Charlie is able to confirm the seller's assurance by reading the label affixed to the aircraft. Charlie's UAS is a ''limited remote identification UAS,'' which means it is designed and produced to operate no more than 400 feet from its control station and cannot broadcast remote identification message elements. Under part 89, he is only allowed to operate his limited remote identification unmanned aircraft within visual line of sight. Prior to his purchase, Charlie visits the FAA's website and confirms that his UAS has an FAA-accepted declaration of compliance. After the previous UAS owner de-registers the unmanned aircraft as required by § 48.105(b)(2), Charlie goes online to the FAADroneZone website, applies for, and is issued a Certificate of Aircraft Registration under part 48. During the registration process, he provides the UAS manufacturer name, the model name, and the aircraft's manufacturer-issued serial number.

Because Charlie is required to register his unmanned aircraft, he is also subject

[63] *https://faadronezone.faa.gov.*

[64] Practically speaking, the FAA anticipates that there will be many more than two publicly available USS and this scenario under which all USS would be simultaneously unavailable should not occur except in the rarest of circumstances.

to the remote identification operating rules in part 89. This means that before Charlie can start to use the UAS, he must subscribe to a USS. He subscribes to Bravo, Inc., an FAA-qualified Remote ID USS and opts to use the unmanned aircraft's serial number for the UAS Identification message element. Charlie's UAS is designed to pair with his smartphone to transmit the remote identification message elements through an internet connection to a USS. Because Charlie's UAS cannot broadcast remote identification message elements, it does not function unless his smartphone is connected to the internet and transmitting through that internet connection to Bravo USS. If Charlie's UAS loses its connection to either the internet or is unable to transmit to Bravo USS in the middle of an operation, he would be required to land the aircraft as soon as practicable. Charlie may take off again as soon as his UAS reestablishes its connection to the internet and can transmit to a Remote ID USS.

4. Operating a UAS Without Remote Identification

Linus wants to fly a UAS without remote identification that he assembled at home from parts he bought at a hobby shop a few years ago. He uses his unmanned aircraft exclusively as a model aircraft. Since he registered his unmanned aircraft in 2018, before the effective date of the remote identification rule, he was not required to provide any specific information about the aircraft, such as the serial number. Linus's aircraft registration expires in 2021, and he will renew the registration of his unmanned aircraft on the FAADroneZone website. At that time, he would have to submit the unmanned aircraft's manufacturer and model name as part of the registration process. Because Linus built his own UAS, he plans to use his own name as the manufacturer and use a model number of his choosing.

Because his UAS does not have any remote identification capabilities, Linus knows he may only operate it within an FAA-recognized identification area. Linus is a member of the Arizona Amateur Modelers (AAM) organization, which has an FAA-recognized identification area near his home. He found information about AAM's FAA-recognized identification area at the FAA website and has agreed to AAM's terms and conditions for operating within the FAA-recognized identification area. While operating there, Linus makes sure that both he and the unmanned aircraft physically stay within the boundaries of the FAA-recognized identification area. Linus operates the unmanned aircraft within visual line of sight and in accordance with any applicable operational rules and site-specific safety guidelines.

5. Flying in an FAA-Recognized Identification Area

Scenario 1: Linus owns another UAS which is a standard remote identification UAS and wants to operate it at AAM's FAA-recognized identification area. Since his second UAS is a standard remote identification UAS, even when operating within the boundaries of the FAA-recognized identification area, he is still required to ensure that the standard remote identification UAS transmits the applicable remote identification message elements through an internet connection to a Remote ID USS and broadcasts directly from the unmanned aircraft. The remote identification requirements for Linus are no different inside or outside of the FAA-recognized identification area when he is operating a UAS with remote identification.

Scenario 2: Linus owns a third UAS—this one a limited remote identification UAS—which was given to him as a birthday present. He decided he would try out his new limited remote identification UAS after he finished posting on his blog. While working on his computer, there was a massive power outage that took out all communications in the city. Since Linus lost connection to the internet in both his computer and mobile phone, he decided he would go fly his limited remote identification UAS at the nearby FAA-recognized identification area until the internet came back and he could finish working on his blog. When Linus arrived at the FAA-recognized identification area, he took out the limited remote identification UAS from its box, turned it on, and attempted to fly. The limited remote identification UAS did not lift off. Linus realized that he was going to have to go back home to get his standard remote identification UAS or his UAS with no remote identification capabilities. Even though he was at an FAA-recognized identification area, he would not be able to fly his limited remote identification UAS because the limited remote identification UAS cannot broadcast remote identification message elements and was produced to meet requirements that prevent it from taking off when it cannot connect to the internet and transmit to a Remote ID USS. Linus will be able to operate his limited remote identification UAS at the FAA-recognized identification area or elsewhere when the connection to the internet is reestablished and his limited remote identification UAS is able to transmit to a Remote ID USS.

Scenario 3: Sam is cleaning out his closet and finds a UAS that he bought a number of years ago. The UAS was purchased before the remote identification rule went into effect and the unmanned aircraft weighs 1 pound. He remembers registering the unmanned aircraft, but knows it does not have remote identification. Sam is aware that some older UAS manufactured without remote identification could receive a software update that makes them remote identification compliant. He checks the UAS manufacturer's website, but unfortunately his model of UAS is not eligible for an update. Because Sam's unmanned aircraft is required to be registered and does not have remote identification, Sam can only operate it at an FAA-recognized identification area.

XI. Law Enforcement Access to Remote Identification and Registration Information

In addition to aiding the FAA in its civil enforcement of FAA regulations, the FAA anticipates that with the implementation of the proposed remote identification requirements, law enforcement and national security agencies would find the remote identification information useful for criminal enforcement, public safety, and security purposes. There are over 18,000 law enforcement and security agencies across the United States, many of which would seek access to remote identification information to respond to emerging threats or as part of an investigation.

The FAA envisions it would facilitate near real-time access to the remote identification message elements (paired with certain registration data, when necessary) for accredited and verified law enforcement and Federal security partners. The information could be used to identify and possibly contact the person manipulating the flight controls of a UAS in response to potentially unsafe or nefarious UAS activities. Potential scenarios include local law enforcement or Federal agencies seeking information in response to nuisance calls from private citizens or large crowd event managers; UAS at emergency scenes (*e.g.,* fires, motor vehicle accident scenes); critical infrastructure protection; UAS around airports; and manned aircraft encounters with UAS. Law enforcement agencies would be able to access remote identification information in near real-time and also access remote identification information maintained by Remote ID USS.

Remote identification would assist in providing law enforcement and security agencies with important information about the UAS in real time, including the location of the control station and therefore the location of the person manipulating the flight controls of the UAS. This information would better enable law enforcement to immediately find the location of the person manipulating the flight controls of a UAS and help with preliminary threat discrimination. In addition, when correlated with registration information, remote identification of UAS also would enable law enforcement officers to determine some information about who the UAS' owner is before engaging the person manipulating the flight controls of a UAS directly. Once located, a law enforcement officer can speak with the person manipulating the flight controls of a UAS to gain potential insight into his or her intentions and allow the officer to either educate the person manipulating the flight controls of a UAS or begin an investigation. Although remote identification of UAS may not deter nefarious actors, it would allow the swift interdiction of the clueless and careless persons manipulating the flight controls of UAS and shift law enforcement and security partners' UAS protection efforts to the truly nefarious actors. This information would also aid in any subsequent criminal or civil enforcement action.

Remote identification information, when correlated with UAS registry information, would inform law enforcement officers about two essential factors: Who registered the UAS, and where the person manipulating the flight controls of a UAS is currently located. This is particularly relevant to a law enforcement officer's decision on whether use of force would be appropriate. Law enforcement officials have made clear that it can be very difficult to make a decision about the potential intent of a person manipulating the flight controls of a UAS with the limited information available from visually observing a UAS. Remote identification information would enable better threat discrimination, an immediate and appropriate law enforcement response, and a more effective follow-on investigation.

As part of this NPRM, the FAA has conducted a Privacy Impact Assessment. The PIA found the NPRM requirements that affect privacy include, among others, the registration of the UAS with the FAA, the transmission of data from the UAS to Remote ID USS, and the broadcast of data from standard remote identification UAS to any person capable of receiving broadcasts. As noted elsewhere in this NPRM, the FAA anticipates that the message elements related to any standard remote identification UAS or limited remote identification UAS are publicly available information and may be accessed by any person able to receive a broadcast or who has access to a Remote ID USS. Currently, the FAA restricts access to information contained in its small unmanned aircraft registration system; the FAA is not proposing to change the restrictions regarding that information.

The PIA discusses the information proposed to be collected and the uses of that information. The PIA points to several mitigation strategies including: limiting collection to only relevant and necessary personally identifiable information (PII), limiting the use of PII to the specific purpose for which it was collected, using security measures to protect PII collected, notifying individuals of collection practices prior to collection, and the voluntary nature of all PII submitted. Additionally, the FAA would enter into contractual agreements with the Remote ID USS including directions for the use, protection, and storage of the data. Section XIV discusses the data security requirements the FAA intends to impose upon FAA-qualified Remote ID USS. Although the message elements themselves would be publicly accessible information, the ability to cross-reference that information with registry data would not be publicly available and would be limited to the FAA and law enforcement for security purposes. A copy of the draft PIA is posted in the docket for this rulemaking.[65]

The following paragraphs provide notional scenarios regarding how the FAA envisions the proposed rule would apply to law enforcement agents.

Lucy is a sheriff's deputy in Boone County, Montana, and is assigned to provide a law enforcement presence at an outdoor concert. At one point during the event, Lucy observes an unmanned aircraft circling above the crowd. She opens an application (app) for law enforcement[66] on her smartphone, which identifies the UAS and indicates that the UAS operator is located 90 feet away from where she is standing. She approaches a man holding a UAS controller who appears to be operating the UAS. The UAS operator tells her he is filming the crowd for the purposes of creating and selling a video of the event. Lucy's app informs her that the unmanned aircraft is not registered. Through the conversation, Lucy learns that the person manipulating the flight controls of the UAS is unaware of the rules for operating unmanned aircraft over people. She also discovers that the person manipulating the flight controls of the UAS does not hold an FAA remote pilot certificate. Based on the information available to Lucy, she requests that the person manipulating the flight controls of the UAS land the UAS in a manner that ensures the safety of the concert audience. After the unmanned aircraft lands, she collects the pilot's information, takes appropriate local law enforcement action, and forwards the information to the FAA for appropriate action.

In another scenario, Officer Schroeder, a law enforcement officer working at a national security facility, sees a UAS operating near a protected area of the facility that is not transmitting any remote identification information. He knows this because he has an internet-connected tablet computer with an application developed for law enforcement that displays remote identification information for UAS operating nearby. Because the UAS is not transmitting any remote identification information, he is unable to access information that could identify the UAS and indicate the location of the person manipulating the flight controls of the UAS. He visually scans an area on the ground below where the UAS is operating but does not see anyone that could be the person manipulating the flight controls of the UAS. After completing his risk assessment, Officer Schroeder determines the UAS is a potential threat and takes action in accordance with his agency's procedures.

On a different occasion, Officer Schroeder is alerted to the presence of a UAS near the same protected area of the facility because the UAS is transmitting remote identification information in accordance with FAA regulatory requirements. Officer Schroeder is able to identify the UAS and sees the location of the person manipulating the flight controls of the UAS on a tablet computer. The serial number being transmitted by the UAS is used to determine that the registered owner is Schultz Inspection Services. Officer Schroeder checks the facility's log of authorized UAS activities for the day and determines that Schultz

[65] Upon finalization, PIAs are posted on the Department of Transportation's Privacy Program page, available at *https://www.transportation.gov/individuals/privacy/privacy-impact-assessments#Federal%20Aviation%20Administration%20(FAA).*

[66] The FAA anticipates that in the future, third parties may develop mobile phone applications for law enforcement use.

Inspection Services is conducting an authorized inspection.

XII. Means of Compliance

A. Introduction

Performance-based regulations describe outcomes, goals, or results without establishing a specific means or process for regulated entities to follow. Under certain FAA performance-based rules, a person may use a means of compliance to meet these performance requirements.

The FAA recognizes that UAS technology is continually evolving, making it necessary to harmonize new regulatory action with technological growth. Setting performance requirements is one way to promote that harmonization. Developing a regulatory framework with performance-based requirements rather than prescriptive text provides a flexible regulation that allows a person to develop means of compliance—which may include consensus standards—that adjust to the fast pace of technological change, innovation, design, and development while still meeting the regulatory requirements. The FAA believes that the use of an FAA-accepted consensus standard as a means of compliance would provide stakeholders this flexibility to comply with the remote identification requirement.

The FAA recognizes that consensus standards are one way, but not the sole means, to show compliance with the performance requirements of the proposed part 89. The FAA emphasizes that, although a means of compliance developed by a consensus standards body (*e.g.,* ASTM International (ASTM), Society of Automotive Engineers (SAE), Consumer Technology Association (CTA), etc.) may be available, any individual or organization would also be able to submit its own means of compliance to the Administrator for consideration and potential acceptance.

The FAA encourages consensus standards bodies to develop means of compliance and submit them to the FAA for acceptance. These bodies generally incorporate openness, balance, due process, appeals process, and peer review. The FAA has an extensive history of working with consensus standards bodies such as ASTM International, SAE, and Institute of Electrical and Electronics Engineers (IEEE). Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTAA)[67] directs Federal agencies to use consensus standards in lieu of government-unique standards except where inconsistent with law or otherwise impractical. The FAA intends to rely increasingly on consensus standards as FAA-accepted means of compliance for UAS performance-based regulations for remote identification, consistent with FAA precedent for general aviation aircraft and other initiatives taken with respect to UAS.

The proposed approach aligns with the direction of the Office of Management and Budget (OMB) Circular A–119, which favors the use of performance-based regulations and voluntary consensus standards. OMB Circular A–119 states that, for cases in which no suitable voluntary consensus standards exist, an agency may consider using other types of standards. In addition, an agency may develop its own standards or use other government-unique standards, solicit interest from qualified standards development organizations for development of a standard, or develop a standard using the process principles outlined in Section 2e of the Circular.[68] OMB Circular A–119 cautions regulators to avoid standards with biases in favor of a few large manufacturers that create an unfair competitive advantage.

B. Applicability

The FAA is proposing that—with limited exceptions—all UAS produced for operation in the United States would be required to be designed and produced to meet the performance requirements of proposed part 89 in accordance with an FAA-accepted means of compliance for remote identification. The FAA is also proposing that persons operating a UAS within the airspace of the United States (other than within FAA-recognized identification areas) would be prohibited from doing so unless the UAS meets the requirements of the rule.

Subpart D of the proposed rule prescribes the minimum remote identification message element set and minimum performance requirements for standard remote identification UAS and limited remote identification UAS. Specifically, § 89.305 and § 89.315 establish the proposed minimum message elements which would have to be broadcast or transmitted, as appropriate, by standard remote identification UAS and limited remote identification UAS. The minimum remote identification message element requirements are discussed in greater detail in section XII.C of this preamble. Sections 89.310 and 89.320 propose the minimum performance requirements for standard remote identification UAS and limited remote identification UAS. These requirements are discussed in section XII.D of this preamble.

Subpart E of the proposed rule would prescribe the requirements for the submission (§ 89.405) and acceptance (§ 89.410) of means of compliance used in the design and production of standard remote identification UAS or limited remote identification UAS to ensure such UAS meet the minimum performance requirements of subpart D. The process for submission and acceptance of a means of compliance is discussed in section XII.F of this preamble.

C. Remote Identification Message Elements

The FAA is proposing the minimum message elements necessary for the remote identification of UAS. These message elements contain the data required to meet the objectives of the proposed rule. Although the message elements are designed specifically to meet remote identification requirements, the FAA anticipates the proposed message elements would also support future UTM services.

Under proposed § 89.315, the message elements for limited remote identification UAS would include: (1) The UAS Identification; (2) an indication of the control station's latitude and longitude; (3) an indication of the control station's barometric pressure altitude; (4) a time mark; and (5) an indication of the emergency status of the UAS.

Under proposed § 89.305, the message elements for standard remote identification UAS would include the same message elements required for limited remote identification UAS plus (1) an indication of the unmanned aircraft's latitude and longitude, and (2) an indication of the unmanned aircraft's barometric pressure altitude.

In accordance with § 89.120, unless authorized by the Administrator to operate UAS for the purpose of aeronautical research or showing compliance with regulations, a person operating a UAS that does not meet the requirements for standard remote identification UAS under § 89.110 or for limited remote identification UAS under § 89.115 would only be allowed to operate within FAA-recognized identification areas.

1. UAS Identification

The UAS Identification message element establishes the unique identity of UAS operating in the airspace of the United States. This message element would consist of one of the following:

[67] Public Law 104–113; 15 U.S.C. 3701 *et seq.*

[68] OMB Circular A–119, Section 5d.

• A serial number assigned to the unmanned aircraft by the person responsible for the production of the standard or limited remote identification unmanned aircraft system; or

• A session identification number (session ID) assigned by a Remote ID USS.

The FAA considered but is not proposing to use the unmanned aircraft registration number instead of a serial number as the UAS Identification. A serial number is a unique identifier issued by the UAS producer to identify and differentiate individual aircraft. The serial number is preferable as a unique identifier in a remote identification message because it would be encoded into the unmanned aircraft system during production whereas a registration number is provided to the owner of the unmanned aircraft and may change for that aircraft if the unmanned aircraft is resold. In addition, a registration number is assigned by the FAA only after a UAS owner applies for one, whereas a serial number would be assigned prior to the UAS being purchased and would provide a means for the UAS to send out a remote identification message, even if it is not registered. The FAA anticipates a UAS would be designed to broadcast and transmit, as appropriate, its serial number regardless of whether the unmanned aircraft has been registered or not.

i. Session Identification

The FAA is proposing an option for UAS operators to be able to use a session ID assigned by a Remote ID USS as the UAS Identification, instead of the unmanned aircraft serial number. This would provide a layer of operational privacy. The association between a given session ID and the unmanned aircraft serial number would not be available to the public through the broadcast message. This association would be available to the issuing Remote ID USS, the FAA, and other authorized entities, such as law enforcement. The FAA recognizes there could be concerns with the transmission of the serial number from UAS conducting routine or repetitive operations. For example, some businesses operating UAS may be concerned with the collection and analysis of flight information by their competitors in a manner that reveals sensitive business practices, such as the flight profile of an individual UAS over time. Allowing a UAS to broadcast and transmit to a Remote ID USS, as appropriate, a session ID instead of a serial number would provide operational privacy to these operators without adversely impacting the safety and security needs of the FAA, national security agencies, and law enforcement. Where a session ID has been issued, the FAA and authorized entities would have the means to correlate the session ID to the UAS serial number and would consequently be able to correlate the UAS serial number to its registration data.

ii. Correspondence Between Serial Number and Session ID

The FAA is proposing in § 89.310(j)(1) to require standard remote identification UAS to use the same remote identification message elements, including the same UAS Identification, when transmitting to a Remote ID USS and broadcasting directly from the unmanned aircraft. The FAA considers that the UAS Identification should be required to be identical because a lack of consistency regarding this message element could create confusion as to who is flying in the airspace of the United States. If the broadcast message and the transmission to the Remote ID USS contain different UAS Identifications, it may potentially appear as if there are two different aircraft in the airspace instead of one in a particular location.

2. An Indication of the Control Station's Latitude and Longitude

As proposed in § 89.305(b) for standard remote identification UAS and § 89.315(b) for limited remote identification UAS, the FAA would require a UAS to transmit the latitude and longitude of its control station through an internet connection to a Remote ID USS. In addition, standard remote identification UAS would have to broadcast this information. This message element would be derived from a position source, such as a GPS receiver. The FAA notes that it is not proposing a specific type of position source used to determine this information to allow the greatest flexibility to designers and producers of UAS. The FAA would require that the person manipulating the flight controls of the UAS is co-located with the control station; therefore, knowing the control station location would also provide the location of the person manipulating the flight controls. This message element would be used by the FAA and authorized entities to locate the UAS operator when necessary for the safety, security, or efficiency of aircraft operations in the airspace of the United States.

3. An Indication of the Control Station's Barometric Pressure Altitude

As proposed in § 89.305(c) for standard remote identification UAS and § 89.315(c) for limited remote identification UAS, the FAA would require an indication of the control station's barometric pressure altitude, referenced to standard sea level pressure of 29.92 inches of mercury or 1013.2 hectopascals. This information would be used to establish a standard altitude reference for UAS operating in the airspace of the United States and provide information that could be used to approximate the control station's height above ground level. This information is necessary for instances where the person manipulating the flight controls of the UAS is not at ground level, such as a person operating a UAS from the roof of a building.

The FAA considered and rejected a requirement to indicate the control station's geometric altitude, which is a measure of altitude provided by GPS that is not affected by atmospheric pressure. Barometric pressure altitude is a more precise measurement than geometric altitude and is the standard altitude reference for aviation. While systems such as ADS–B require an indication of both barometric pressure altitude and geometric altitude, those requirements are necessary to ensure the safe separation of aircraft in controlled airspace. The FAA concluded that a single altitude reference for UAS with remote identification equipment is sufficient for identification and thus is proposing to use only barometric pressure altitude. The FAA requests comments regarding whether both barometric pressure altitude and geometric altitude of the control station should be part of the remote identification message elements.

4. An Indication of the Unmanned Aircraft's Latitude and Longitude

As proposed in § 89.305(d) for standard remote identification UAS, this message element would provide the position of the unmanned aircraft using its latitude and longitude and would be derived from a position source, such as a GPS receiver. This message element would be used to associate a specific unmanned aircraft with its associated control station position. It would also be used to provide situational awareness to other aircraft, both manned and unmanned, operating nearby. Manned aircraft, especially those operating at low altitudes where UAS operations are anticipated to be the most prevalent, such as helicopters and agricultural aircraft, could carry the necessary

equipment to display the location of UAS operating nearby. Facility operators could use latitude and longitude information to know about the location of UAS operating near an airport, airfield, or heliport. The FAA notes that this proposed requirement would not apply to limited remote identification UAS, which would be required to transmit message elements regarding the location of the control station only through an internet connection to a remote ID USS.

5. An Indication of the Unmanned Aircraft's Barometric Pressure Altitude

As proposed in § 89.305(e) for standard remote identification UAS, this message element would indicate the unmanned aircraft's barometric pressure altitude referenced to standard sea level pressure of 29.92 inches of mercury or 1013.2 hectopascals. This information would be used to establish a standard altitude reference for UAS operating in the airspace of the United States. It would also be used to provide situational awareness to other aircraft, both manned and unmanned, operating nearby. The FAA notes that this proposed requirement would not apply to limited remote identification UAS, which would be required to transmit through an internet connection to a Remote ID USS message elements regarding the location of the control station only. The FAA considered and rejected a requirement to indicate the unmanned aircraft's geometric altitude, concluding that a single altitude reference—barometric pressure altitude—is sufficient (see discussion in XII.C.3 of this preamble). The FAA requests comments regarding whether both barometric pressure altitude and geometric altitude of the unmanned aircraft should be part of the remote identification message elements.

6. Time Mark

This message element would provide a time mark identifying the Coordinated Universal Time (UTC) time of applicability of a position source output. A position source output is the latitude and longitude coordinates of the unmanned aircraft or control station, as applicable. The time of applicability is therefore a record of the UTC time when the UAS was at a particular set of coordinates. As proposed in § 89.305(f) for standard remote identification UAS, the time mark would apply to the position source output for both the control station and the unmanned aircraft. For limited remote identification UAS, the same requirement is proposed in § 89.315(d), but the time mark would only be applicable to the control station position source output. While the FAA is not proposing a particular format for the time mark, the FAA anticipates that a means of compliance that specifies a GPS position source would also specify a GPS time mark.

As an unmanned aircraft or control station position changes, the position source, such as a GPS receiver, provides continuous outputs that indicate the new position of the unmanned aircraft or control station. The time mark message element would be used to indicate the time a particular unmanned aircraft or control station location was measured, therefore providing information that can be used to correlate the time and location of unmanned aircraft operating in the airspace of the United States.

7. An Indication of the Emergency Status of the UAS

As proposed in § 89.305(g) for standard remote identification UAS and § 89.315(e) for limited remote identification UAS, this message element would specify a code that indicates the emergency status, which could include lost-link, downed aircraft, or other abnormal status of the UAS. The FAA anticipates that a standard for remote identification would specify the different emergency codes applicable to unmanned aircraft affected by this rule. This message element could be initiated manually by the person manipulating the flight controls of the UAS or automatically by the UAS, depending on the nature of the emergency and the UAS capabilities. This message element would alert others that the UAS is experiencing an emergency condition and would indicate the type of emergency. The requirement would be useful for a multitude of reasons. For example, security personnel could use an emergency status to differentiate a nefarious actor from a malfunctioning unmanned aircraft. Other users of the airspace of the United States or Remote ID USS could use the information to make informed decisions about how best to keep nearby aircraft out of the way of an unmanned aircraft experiencing an emergency. Thus, the emergency status requirement would contribute to a safer and more efficient airspace of the United States.

D. Minimum Performance Requirements

The proposed rule would require standard remote identification UAS to meet the minimum performance requirements established in § 89.310 by using an FAA-accepted means of compliance. These requirements relate to the control station location, automatic connection to a Remote ID USS, time mark, self-testing and monitoring, tamper resistance, connectivity, error correction, interference considerations, message transmission, and message elements performance requirements.

The proposed rule would require limited remote identification UAS to meet the minimum performance requirements established in § 89.320 by using an FAA-accepted means of compliance. The performance requirements for limited remote identification UAS cover the topics addressed in the requirements for standard remote identification UAS not related to broadcast functionality, and include criteria for range limitation.

1. Control Station Location

As proposed in § 89.310(a) for standard remote identification UAS and § 89.320(a) for limited remote identification UAS, the FAA would require all UAS with remote identification to generate and encode a control station location that corresponds to the location of the person manipulating the flight controls of the UAS. The rationale for this requirement is to assist the FAA and authorized persons using this information to locate the person manipulating the flight controls of the UAS. The FAA envisions that in some situations, the control station might be a distributed system where some elements, such as a remotely sited uplink antenna, might not be located in a close enough proximity to the person manipulating the flight controls of the UAS. Thus, the FAA intends for an FAA-accepted means of compliance to outline a process for UAS designers and producers to determine which part or element of the control station should be incorporated into the remote identification message due to its close proximity to the person manipulating the flight controls of the UAS.

2. Automatic Remote ID USS Connection

As proposed in § 89.310(b) for standard remote identification UAS and § 89.320(b) for limited remote identification UAS, the FAA is proposing that from takeoff to landing, the UAS would be required to automatically maintain a connection to the internet when available and would be required to transmit the message elements to a Remote ID USS through that connection. The FAA envisions that UAS would connect to an internet-based Remote ID USS upon initialization. This process would be similar to the way cell phones automatically connect to cellular networks without user input

when the cell phones are turned on and when they are within range of a cellular network. Standard remote identification UAS would also be required to broadcast message elements.

The FAA welcomes comments on whether the connection should be required from takeoff to landing or whether it should be required from start up to shut down.

3. Time Mark

As proposed in §§ 89.310(c) for standard remote identification UAS and § 89.320(c) for limited remote identification UAS, the FAA is proposing that all UAS with remote identification would be required to generate and transmit through an internet connection to a Remote ID USS messages with the time mark message element; standard remote identification UAS would broadcast the message element as well. The time mark message element would have to be synchronized to the time when all other message elements are generated. The purpose of this requirement is to ensure that position and other data contained in remote identification messages would have a usable time reference for the purposes of reconstructing unmanned aircraft flight profiles.

4. Self-Testing and Monitoring

The FAA is proposing in § 89.310(d) for standard remote identification UAS and § 89.320(d) for limited remote identification UAS, to require UAS with remote identification to automatically test the remote identification functionality when the UAS is powered on and to notify the person manipulating the flight controls of the UAS of the result of the test. Further, the FAA is proposing to prohibit these UAS from taking off if the remote identification equipment is not fully functional. Since a person would only be allowed to operate a standard remote identification UAS or a limited remote identification UAS if its remote identification equipment is functional (§ 89.110(c)(2) and § 89.115(c)(2)), the FAA envisions that UAS designers and producers would build a notification system to alert potential operators of any remote identification equipment-related malfunction. This notification requirement would help operators comply with the operating requirements of proposed part 89.

The FAA is also proposing to require UAS to continuously self-monitor the remote identification functionality throughout the flight and to provide notification of malfunction or failure to the person manipulating the flight controls of the UAS. With this capability, the person manipulating the flight controls of the UAS can make informed decisions about what actions to take to minimize risk to other users of the airspace and people and property on the ground. This requirement is necessary because, as proposed in § 89.110(b), a standard remote identification UAS would be required to land as soon as practicable if it loses broadcast capability in-flight. Similarly, a limited remote identification UAS would be required to land as soon as practicable if it can no longer transmit the message elements through an internet connection to a Remote ID USS, as proposed in § 89.115(b).

5. Tamper Resistance

The FAA is proposing in § 89.310(e) for standard remote identification UAS and in § 89.320(e) for limited remote identification UAS to require that UAS with remote identification be designed and produced in a way that reduces the ability of a person to tamper with the remote identification functionality. The FAA envisions the UAS would have tamper-resistant design features to hinder the ability to make unauthorized changes to the remote identification equipment or messages.

6. Connectivity

For standard remote identification UAS, the FAA is proposing in § 89.310(f)(1) and § 89.310(f)(2) that if the internet is available at takeoff, the unmanned aircraft would be required to be designed and produced so that it would not be able to take off unless it is connected to the internet and transmitting the message elements in proposed § 89.305 through that internet connection to a Remote ID USS.

In addition, the FAA is proposing to require that the message elements be broadcast directly from the unmanned aircraft. If the internet is unavailable at takeoff, the standard remote identification UAS would not be able to take off unless it is broadcasting the message elements. Further, in § 89.310(f)(3), the FAA is proposing to require a standard remote identification UAS to continuously monitor its connection to the internet and the transmission of remote identification message elements to a Remote ID USS. If either is lost, the UAS would have to notify the person manipulating the flight controls of the UAS so he or she may take appropriate action, as needed.

For limited remote identification UAS, the FAA is proposing in § 89.320(f)(1) that if the internet is available at takeoff, the limited remote identification UAS would be required to be designed and produced in such a way that it would not be able to take off until it establishes a connection to the internet and transmits the message elements in proposed § 89.315 through that internet connection to a Remote ID USS. If the internet is unavailable at takeoff, the limited remote identification UAS would not be able to take off because, unlike a standard remote identification UAS, a limited remote identification UAS would not be able to broadcast the remote identification message elements in § 89.305 or § 89.315. Further, under proposed § 89.320(f)(2), a limited remote identification UAS would be required to continuously monitor the connection to the internet and the transmission of remote identification message elements to a Remote ID USS. If connection to the internet is lost or the UAS stops transmitting to a Remote ID USS, the UAS would be required to notify the person manipulating the flight controls of the UAS so that the person may land the limited remote identification UAS as soon as practicable.

7. Error Correction

As proposed in § 89.310(g) for standard remote identification UAS and § 89.320(g) for limited remote identification UAS, the FAA is proposing to require all UAS with remote identification equipment to incorporate error correction in the transmission and broadcast of the message elements, as appropriate. Error correction would allow remote identification broadcast receivers, such as smart phones, and Remote ID USS to detect potential errors that may exist in the message, and take the appropriate action. The FAA is not proposing any specific algorithms or technologies that would be required to be incorporated into an FAA-accepted means of compliance. Instead, the error correction capabilities incorporated into a proposed means of compliance would be reviewed and evaluated as a part of the acceptance process.

8. Interference Considerations

As proposed in § 89.310(h) for standard remote identification UAS and in § 89.320(h) for limited remote identification UAS, and consistent with FCC regulations, the FAA would prohibit the remote identification equipment from causing harmful interference to other systems or equipment installed on the unmanned aircraft or control station. For example, the remote identification equipment could not cause harmful interference to the UAS command and control datalink and could not otherwise be in violation of FCC regulations. In addition, the

remote identification equipment would not meet the requirements of this rule if its operation would be adversely affected by interference from other systems or equipment installed on the unmanned aircraft or control station, such as the UAS command and control datalink or a camera feed from the unmanned aircraft to a display at the control station.

A specific means of compliance may include requirements to use specific radio frequency emitters and receivers. The FAA envisions that a proposed means of compliance could include an analysis of frequency congestion and interference considerations. For example, a proposed means of compliance could require analysis and mitigation of interference from equipment on the ground as well as other similarly equipped unmanned aircraft in the air. Additionally, the means of compliance could also consider the impact those equipped aircraft could have on manned aircraft or equipment on the ground that use the same frequency bands (*e.g.,* personal electronic devices). The FAA does not propose a particular method by which interference considerations are identified or mitigated by designers or producers. Instead, the FAA would consider proposed methods for dealing with interference considerations and would verify that they are appropriate for the types of equipment and operations applicable to those means of compliance and do not run counter to any applicable regulations, including FCC regulations.

9. Message Transmission

The FAA is proposing in § 89.310(i)(1) that standard remote identification UAS be capable of transmitting the message elements in proposed § 89.305 through an internet connection to a Remote ID USS. Additionally, the FAA is proposing in § 89.310(i)(2) to require that standard remote identification UAS be capable of broadcasting the message elements in proposed § 89.305 using a non-proprietary broadcast specification and radio frequency spectrum in accordance with 47 CFR part 15 that is compatible with personal wireless devices. The FAA envisions that remote identification broadcast equipment would broadcast using spectrum similar to that used by Wi-Fi and Bluetooth devices. The FAA is not, however, proposing a specific frequency band. Rather, the FAA envisions industry stakeholders would identify the appropriate spectrum to use for this capability and would propose solutions through the means of compliance acceptance process. This requirement would ensure that the public has the capability, using existing commonly available and 47 CFR part 15 compliant devices, such as cellular phones, smart devices, tablet computers, or laptop computers, to receive these broadcast messages.

The FAA has considered the conditions of operation, the general technical requirements, and the performance limitations associated with the use of part 15 devices and has determined that these conditions, requirements, and limitations would be acceptable and compatible with the proposed use and expected performance of the broadcast capability of standard remote identification UAS. The FAA acknowledges that, by rule, part 15 devices, including those used for the remote identification broadcast, may not cause harmful interference and must accept any interference received.

To meet the proposed requirement of compatibility with personal wireless devices, a means of compliance may take into consideration whether the remote identification capability would be compatible with current and older models of personal wireless devices still in common usage. The FAA intends the proposed requirement to ensure that the broadcast message from standard remote identification UAS would be accessible by most personal wireless devices in use.

Additionally, for standard remote identification UAS, § 89.310(i)(2) proposes that the broadcast device use radio frequency spectrum in accordance with 47 CFR part 15 that is compatible with personal wireless devices and must be designed to maximize the range at which the broadcast can be received, while complying with the 47 CFR part 15 regulatory requirements in effect at the time that the Declaration of Compliance is submitted for FAA acceptance, and must be integrated into the unmanned aircraft or control station without modification to its authorized radio frequency parameters. This proposed requirement would ensure that producers use a means of compliance that specifies a broadcast technology or broadcast technology characteristics that maximize the broadcast range while still meeting the other minimum performance requirements under this proposed rule. Maximizing the broadcast range would ensure that remote identification information would be available to the largest number of potential receiving devices within the limits permitted by law. Maximized range would also optimize future operational capabilities, such as detect-and-avoid and aircraft-to-aircraft communications where range is a factor.

For limited remote identification UAS, the FAA is proposing in § 89.320(i) that the UAS be capable of transmitting the message elements in proposed § 89.315 through an internet connection to a Remote ID USS. Under the proposed rule, limited remote identification UAS would be prohibited from broadcasting the remote identification message elements.

For both standard and limited remote identification UAS, at this time the FAA has not proposed any requirements regarding how the UAS connects to the internet to transmit the message elements or whether that transmission is from the control station or the unmanned aircraft. The FAA understands, however, that there are concerns about the impact that connecting to the internet directly from the unmanned aircraft (as opposed to the control station) could have on networks that use radio frequency spectrum, including interference, network stability, or other effects. The FAA seeks comments on these potential effects, recognizing that issues of interference or other impacts to communications networks are independently reviewed by the FCC. The FAA requests that comments indicate any drawbacks or impacts to users or license holders of either licensed or unlicensed spectrum. Additionally, the FAA seeks feedback regarding whether any existing UAS are capable of connecting to the internet from the unmanned aircraft, and if so, what methods are used for those connections.

10. Interoperability

To achieve interoperability among standard remote identification UAS that may be produced using different means of compliance, the FAA is also proposing in § 89.310(i)(2) that for standard remote identification UAS, a means of compliance would be required to include the requirement that the message elements be broadcast using a non-proprietary specification for remote identification. For the broadcast to be interoperable with personal wireless devices, the message elements for standard remote identification UAS would have to be broadcast using a message format available to the public. A known message format is necessary for the receiving personal wireless devices to decode the messages and make the message elements available for use by software applications on the receiving devices. For example, where the UAS remote identification broadcast message format is known to the public,

an entity would be able to develop a mobile phone application that allows the user to view unmanned aircraft operating nearby on a map display.

11. Message Elements Performance Requirements

As proposed in § 89.310(j) for standard remote identification UAS and § 89.320(j) for limited remote identification UAS, the FAA would require that all UAS with remote identification meet certain minimum requirements regarding the transmission of the message elements including the minimum performance requirements related to positional accuracy, barometric pressure, message latency, and message transmission rate. The FAA invites comments on whether the parameters for the message elements performance requirements proposed in § 89.310(j) and § 89.320(j) are appropriate and requests commenters submit specifics, supported by data, to sustain their position.

i. Transmission and Broadcast of Identical Message Elements

Under § 89.310(j)(1), the FAA is proposing that standard remote identification UAS transmit and broadcast identical message elements.

ii. Positional Accuracy

The FAA is proposing positional accuracy requirements that are compatible with commercial off the shelf position sources, such as GPS receivers integrated into many existing UAS, smart phones, or other smart devices. For an unmanned aircraft, the position source is considered to be equipment onboard the aircraft that computes a geodetic position (latitude and longitude). The position source can be a separate sensor or can be integrated into other systems. While the FAA anticipates that most unmanned aircraft would use a GPS receiver as the position source, other equipment could be used as long as it is capable of producing the required message elements and meets the proposed accuracy requirement. For a control station, the position source is considered to be equipment that is either integrated into the control station or separate from but in close proximity to the control station. For example, a commercially available smart phone with a GPS receiver could be an acceptable control station position source if it meets the proposed accuracy requirement.

As proposed in § 89.310(j)(2) for standard remote identification UAS, the reported position of the unmanned aircraft and control station would have to be accurate to within 100 feet of the true position, with 95 percent probability. For limited remote identification UAS, the same requirement is proposed in § 89.320(j)(1) except that it would only apply to the control station since the FAA is not proposing an unmanned aircraft location message element requirement for limited remote identification UAS. The proposed 100-foot accuracy requirement is based on the 30-meter (98.4 feet) accuracy requirement for commercial off the shelf GPS position sources allowed for Traffic Awareness Beacon System (TABS) equipment in TSO–C199.[69]

Based on information the FAA has reviewed from UAS producers and smart device technology developers, the FAA believes this accuracy requirement is achievable by the majority of GPS-enabled UAS and smart devices in use today, and indications are that future GPS-based technology will have improved accuracy compared to current systems. The FAA expects that future UAS will take advantage of technological advancements in position source accuracy to provide even greater accuracies as technologies evolve.

iii. Barometric Pressure Altitude Accuracy

The FAA is proposing an unmanned aircraft and control station barometric pressure altitude accuracy requirement that it believes is compatible with barometers integrated into many existing UAS, smart phones, and smart devices.

As proposed in § 89.310(j)(3) for standard remote identification UAS, the reported barometric pressure altitude for the unmanned aircraft and the control station would be required to be accurate to within 20 feet of the true barometric pressure altitude for pressure altitudes ranging from 0 to 10,000 feet. For limited remote identification UAS, the same requirement is proposed in § 89.320(j)(2) for the control station only, as there is no unmanned aircraft pressure altitude message element requirement for limited remote identification UAS. Based on information the FAA has reviewed from producers of UAS, the FAA believes this requirement is achievable by many UAS and smart devices in use today that are equipped with a barometer. In addition, there are indications that UAS and smart device barometer technology is continually improving in terms of accuracy, and the FAA expects the trend of improving performance and accuracy of these systems to continue. The FAA seeks comment from UAS designers and producers and other interested individuals on whether the proposed barometric pressure altitude accuracy requirement is consistent with current and anticipated future UAS performance capabilities.

iv. Remote Identification Message Latency

The FAA is proposing a remote identification system latency requirement that it believes is compatible with existing commercial off the shelf UAS systems, including position sources, and both transmit and broadcast technologies. The proposed latency requirement would apply to both the transmitted message set and the broadcast message set and is the time between when a position is measured by the unmanned aircraft or control station position source and when it is transmitted and broadcast by the remote identification equipment. The latency requirement does not apply to any systems external to the UAS, such as broadcast receivers or information display devices. Based on information the FAA has reviewed from manufacturers of commercial off the shelf position sources, broadcast equipment, and transmission equipment, the FAA believes a latency of no more than one second is achievable by existing systems. The FAA therefore proposes that this is the appropriate latency requirement for the remote identification message set in § 89.310(j)(4) for standard remote identification UAS and in § 89.320(j)(3) for limited remote identification UAS.

v. Remote Identification Message Transmission Rate

The FAA is proposing a transmission rate for the remote identification message elements that it believes is compatible with existing commercial off the shelf UAS systems, including both internet connectivity and broadcast technologies. The proposed transmission rate would apply to both the message elements transmitted to a Remote ID USS and broadcast, and is the minimum rate at which the remote identification message would be either broadcast or transmitted to a Remote ID USS by the remote identification equipment. The FAA believes a transmission rate of at least 1 message per second (1 hertz) is achievable by existing systems and is proposing this as the minimum transmission rate for the remote identification message elements in § 89.310(j)(5) for standard remote

[69] *See http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgTSO.nsf/0/1600df588a6f53ae86257d710070d105/$FILE/TSO-C199.pdf.* Accessed July 31, 2019.

identification UAS and § 89.320(j)(4) for limited remote identification UAS.

12. Cybersecurity

As proposed in § 89.310(k) for standard remote identification UAS and § 89.320(k) for limited remote identification UAS, the FAA is proposing to require all UAS with remote identification equipment to incorporate cybersecurity protections for the transmission and broadcast of the message elements, as appropriate. Cybersecurity protections are necessary to defend against cyber threats that could adversely affect the authenticity or integrity of the remote identification information being transmitted by the UAS to a Remote ID USS or being broadcast from the unmanned aircraft. The FAA is not proposing any specific cybersecurity protection methods that would be required to be incorporated into an FAA-accepted means of compliance. Instead, the cybersecurity protection methods incorporated into a proposed means of compliance would be reviewed and evaluated as a part of the acceptance process.

13. Range Limitation

The FAA is proposing in § 89.320(l) to require that a limited remote identification UAS be designed to operate no more than 400 feet from its control station. The FAA is proposing this as a performance-based requirement so that persons submitting means of compliance can innovate and develop their own means to meet the requirement. The FAA envisions that this requirement can be met through a range of solutions, such as geo-fencing or command and control link power limitations.

The FAA is not proposing to impose any range limitation on standard remote identification UAS.

14. Broadcast Limitation

The FAA is proposing in § 89.320(m) to prohibit limited remote identification unmanned aircraft from broadcasting remote identification message elements identified in § 89.305 or § 89.315. A limited remote identification unmanned aircraft cannot broadcast remote identification message elements using radio frequency spectrum because the broadcast function is only applicable to standard remote identification UAS. Remote identification broadcast capability on a limited remote identification UAS would not have been designed or produced to meet the proposed requirements in this rule and could result in erroneous, non-compliant, or incorrectly formatted messages being broadcast, undermining the principal purposes of this proposed rule. An unmanned aircraft that is equipped to broadcast any of the remote identification message elements identified in § 89.305 or § 89.315 would have to comply with the remote identification requirements for standard remote identification UAS.

E. Other Performance Requirements Considered

The FAA considered imposing additional performance requirements as part of an acceptable means of compliance; however, the FAA believes that the current proposal reflects the minimum requirements necessary to achieve the intent of the proposed rule. Regardless, the FAA acknowledges that imposing additional requirements could add value to the remote identification of UAS and further integration into the National Airspace System. The FAA welcomes comments on whether the final rule should incorporate additional performance requirements, including but not limited to any of the ones addressed in this section.

The FAA emphasizes that nothing in the proposed rule would preclude a person or entity from developing and submitting a means of compliance that covers the topics discussed in this section or any other topics that span beyond the minimum performance requirements of the proposed rule. Although the FAA is proposing to require specific minimum performance requirements on certain message elements such as location and altitude, the FAA envisions that technology may progress such that improved performance may become achievable and revised minimum performance requirements may be appropriate at some point in the future. For this reason, the FAA would be willing to consider means of compliance that incorporate performance requirements that are more stringent and that exceed the minimum performance requirements of the proposed rule. The FAA would not accept any means of compliance that fails to meet any of the minimum performance requirements of the proposed rule but would consider accepting means of compliance that exceed the minimum performance requirements.

Once a means of compliance is accepted by the FAA, it establishes the actual required performance and functionality for UAS with remote identification that are designed and produced using that particular means of compliance. A person responsible for the design and production of UAS using a particular means of compliance would be required to adhere to that means of compliance in its totality, even if certain elements exceed the minimum performance requirements. Developers of means of compliance should consider the implications of specifying performance or functionality that exceeds the minimum regulatory requirements.

The FAA considered several potential requirements that it ultimately decided were not necessary to include in the proposed minimum performance requirements. The FAA considered but chose not to propose the following:

- Other message elements such as certain UAS operator contact information or other aircraft or control station information such as velocity, direction, route, or altitude above ground level;
- Equipment interface requirements such as the appropriate connections between GPS receivers, altimeters, and the remote identification message compiler, the communication protocol between the aircraft and the control station through which remote identification message data is exchanged, or protocols and interfaces between UAS, internet providers, and Remote ID USS;
- Flight data recording features to store remote identification information within the UAS;
- Requirements for connection indications such as a separate indication of whether the UAS is connected to the internet and its connection to a specific Remote ID USS, an indication of the transmission latency, or a notification of the specific Remote ID USS to which the UAS is connected; or
- Transmission or broadcast requirements during a command and control lost-link event.

Although the FAA is not proposing these features in the minimum performance requirements, the FAA requests comments on whether and why any should be required.

F. Submission and FAA Acceptance of Means of Compliance

Any person or entity would be able to submit a proposed means of compliance to the FAA for review and potential acceptance. To submit a means of compliance for acceptance by the FAA, a person or entity would be required to indicate how the means of compliance meets the minimum performance requirements in §§ 89.305 through 89.320, as applicable, by submitting any information, analysis, or test results necessary for the FAA to determine acceptability. Specifically, under § 89.405(b), the person or entity would be required to submit all of the following information to the FAA: (1)

The name of the person or entity submitting the means of compliance, the name of the main point of contact for communications with the FAA, the physical address, email address, and other contact information; (2) a detailed description of the means of compliance; (3) an explanation of how the means of compliance addresses all of the minimum performance requirements established in §§ 89.305 through 89.320, as applicable, so that any standard remote identification UAS or limited remote identification UAS designed and produced using that means of compliance meets the remote identification performance requirements of proposed part 89; and (4) any substantiating material the person or entity wishes the FAA to consider as part of the application.

In § 89.405(c), the FAA is proposing to require the means of compliance to include testing and validation procedures for the person responsible for production of the standard remote identification UAS or limited remote identification UAS to demonstrate through analysis, ground test, or flight tests, as appropriate, how the UAS with remote identification would perform its intended functions and how it meets the minimum performance requirements established in §§ 89.305 through 89.320, as applicable. The FAA makes no finding on radio transmitter technical compliance with 47 CFR regulations but expects technically compliant transmitters to be integrated into the UAS without modification to their authorized radio frequency parameters.

The FAA would indicate acceptance of a means of compliance by notifying the submitter and publishing a notice in the **Federal Register** identifying the means of compliance as accepted. The FAA would also notify the public that it has accepted the means of compliance by including it on a list of accepted means of compliance at *https://www.faa.gov.* The FAA would not disclose commercially valuable information in this document. It would only provide general information stating that FAA has accepted the means of compliance.

G. Rescission of a Means of Compliance

Pursuant to proposed § 89.415, a means of compliance is subject to ongoing review by the Administrator. The Administrator would be able to rescind acceptance of a means of compliance when the Administrator finds that a means of compliance does not meet any or all of the requirements of the proposed rule. The FAA would publish a notice of rescission in the **Federal Register**. If discussions with the person or entity that submitted the means of compliance are unable to resolve any noncompliance issues, the FAA would notify the person or entity who submitted the FAA-accepted means of compliance of its decision to rescind its acceptance of the means of compliance by sending a letter of rescission to the email address on file for such person or entity. The FAA would also provide notice of the rescission to any person responsible for the production of standard remote identification UAS or limited remote identification UAS who submitted an FAA-accepted declaration of compliance as discussed in section XIII.E of this preamble that uses the means of compliance that is no longer accepted as a basis for compliance with the proposed requirements of this rule. Lastly, the FAA would also choose to publish at *https://www.faa.gov* a list of rescinded means of compliance.

The main consequence of the rescission of the FAA's acceptance of a means of compliance is that the FAA's acceptance of any declaration of compliance that relies on the no longer accepted means of compliance may be rescinded. Therefore, any UAS with remote identification produced and listed under a declaration of compliance that relies on a no longer accepted means of compliance would fail to comply with the proposed requirements of this rule and would be restricted to flying within FAA-recognized identification areas. The rescission of the FAA's acceptance of a declaration of compliance, as a result of the rescission of the FAA's acceptance of a means of compliance, would follow the rescission and reconsideration provisions of proposed § 89.530. In such case, prior to rescinding the FAA's acceptance of a declaration of compliance, the FAA proposes to notify the submitters of the affected FAA-accepted declaration(s) of compliance that their declaration(s) of compliance may be rescinded by sending a letter to the email address on file for such person or entity. Where the proposed rescission is due to the rescission of the FAA's acceptance of a means of compliance, the FAA may allow the submitter of the FAA-accepted declaration of compliance to amend the declaration of compliance to include another FAA-accepted means of compliance, as long as the UAS produced and listed under the declaration of compliance comply with the newly-listed means of compliance. The FAA proposes not to rescind its acceptance of a declaration of compliance that is promptly amended to list another FAA-accepted means of compliance. Failure to amend the declaration of compliance would result in the rescission of FAA acceptance of the declaration of compliance in accordance with the provisions of § 89.530.

The FAA does not expect the rescission of its acceptance of a means of compliance to occur frequently. However, the FAA does contemplate potential scenarios when FAA-acceptance of a means of compliance might be rescinded. For example, the FAA could rescind its acceptance of a means of compliance if it is based on a technology standard that becomes obsolete, particularly if the old technology would interfere with the newer technologies used on UAS at that given time. The FAA believes that due to the rapid changes in technology, new means of compliance would likely be submitted for FAA acceptance whenever a significant technological change warrants a change in the design and production of UAS with remote identification. The FAA believes that due to the typical lifecycle of UAS, very few UAS built in accordance with older means of compliance would be in operation by the time the FAA's acceptance of a means of compliance is rescinded due to a major shift in technology. By that time, the FAA expects most UAS would be designed and produced in accordance with the latest means of compliance available. Older, operational UAS built in accordance with means of compliance that are no longer accepted would still be eligible to operate within FAA-recognized identification areas.

H. Record Retention Requirements

In § 89.420, the FAA is proposing for persons or entities who submit FAA-accepted means of compliance under part 89 to retain certain information for as long as the means of compliance is accepted plus an additional 24 calendar months. The information would be required to be made available to the FAA upon request. Specifically, the person or entity would be required to retain all documentation and substantiating data submitted for the acceptance of the means of compliance; records of all test procedures, methodologies, and other procedures, if applicable; and any other information necessary to justify and substantiate how the means of compliance enables compliance with the remote identification requirements of part 89.

This requirement is being proposed so that, in the event of an FAA investigation or analysis, the Administrator may obtain data necessary to re-assess the acceptability

of the means of compliance. The additional 24 calendar months is being proposed because the FAA envisions that, if a means of compliance is found to no longer be acceptable, UAS produced using that means of compliance might still be on the market or in the possession of operators. The additional time would ensure that the data is still readily available while any FAA actions are being taken such as possible rescissions of FAA acceptance of declarations of compliance. If the FAA requests the data and the submitter did not retain the data in accordance with this requirement, then the Administrator may choose to rescind acceptance of the means of compliance.

XIII. Design and Production Requirements

A. Applicability and Summary of Requirements

Subpart F of the proposed rule prescribes requirements for the design and production of UAS operated in the United States. It also proposes certain procedural requirements for the submission of declarations of compliance for FAA acceptance and certain rules governing persons who have submitted FAA-accepted declarations of compliance.

According to proposed § 89.501(c), the requirements of subpart F would not apply to the following UAS, unless they are intentionally designed or produced as standard remote identification UAS or limited remote identification UAS:

- Amateur-built UAS.
- UAS of the United States Government.[70]
- UAS where the unmanned aircraft weighs less than 0.55 pounds including the weight of anything attached to or carried by the aircraft.
- UAS designed or produced exclusively for the purpose of aeronautical research or to show compliance with regulations.

The FAA is proposing that persons responsible for the production of standard remote identification UAS or limited remote identification UAS would be required to do the following:

- Under § 89.505, ensure each UAS produced has a serial number that complies with the ANSI/CTA–2063–A serial number standard.
- Under § 89.510(a)(1), ensure that the UAS are designed and produced to meet the minimum performance requirements for standard remote identification UAS or limited remote identification UAS by using an FAA-accepted means of compliance.
- Under § 89.510(b), comply with certain inspection, audit, and notification requirements.
- Under § 89.515, label each unmanned aircraft to indicate that the unmanned aircraft system is remote identification compliant and indicate whether it is a standard remote identification UAS or a limited remote identification UAS.
- Under § 89.520, submit a declaration of compliance for acceptance by the FAA declaring that the UAS complies with the design and production requirements of the proposed rule.

The FAA anticipates that most UAS produced will be consumer or professional grade, fully-assembled UAS from a commercial manufacturer. Under those circumstances, the manufacturer is subject to all of the design and production requirements of subpart F. There are certain circumstances, however, where the responsibility for the production requirements may be less obvious.

- *UAS Kits.* The FAA anticipates that some UAS producers will wish to sell kits that would allow a person to assemble a fully functional UAS. If the kit contains all the parts and instructions necessary to build a UAS, the producer of the kit, not the person assembling the UAS from the kit, is considered the manufacturer of the UAS and is subject to all of the design and production requirements of proposed subpart F. For purposes of the proposed rule, the FAA does not consider any package containing less than 100% of the parts and instructions necessary to assemble a complete, functional UAS to be a UAS kit.
- *Amateur-built UAS.* As discussed later in this section, the FAA considers a UAS to be amateur built when the person building it fabricates and assembles more than 50 percent of the UAS. Under these circumstances, the person building the UAS would be the producer and may, but is not required to, comply with the design and production requirements of proposed subpart F.
- *UAS assembled completely from pre-fabricated parts.* The FAA anticipates that some model aircraft enthusiasts may assemble UAS entirely from pre-fabricated parts and that commercial vendors may wish to sell UAS parts, including packages that contain more than 50 but less than 100 percent of the parts necessary to build a UAS. The resulting UAS would not qualify as amateur-built because the person building it would be fabricating and assembling 50 percent or less of the UAS. The UAS would not qualify as built from a kit because it did not include 100 percent of the necessary parts. Under these circumstances, the person assembling the UAS would be considered the producer and would be required to comply with the design and production requirements of proposed subpart F.

In § 89.1 of this proposed rule, the FAA proposes defining an amateur-built unmanned aircraft system as a UAS, the major portion of which has been fabricated and assembled by a person who undertook the construction project solely for his or her own education or recreation. The FAA would consider a UAS to be amateur built if the person building it fabricates and assembles at least 50 percent of the UAS.

The FAA is proposing, in § 89.501(c)(1) to exclude amateur-built UAS from the requirements of subpart F. Specifically, amateur-built UAS would not be required to meet the performance requirements for a standard remote identification UAS or limited remote identification UAS. However, irrespective of the applicability of subpart F, all UAS operated in the airspace of the United States would be subject to the operating requirements of the proposed rule. Accordingly, an amateur-built UAS that is fabricated and assembled without remote identification would be restricted to operating within an FAA-recognized identification area in accordance with §§ 89.105(c) and 89.120. The FAA has chosen to exclude this category from the design and production requirements of this rule because builders of amateur-built UAS may not have the necessary technical knowledge, ability, or financial resources to design and produce a UAS that meets the minimum performance requirements proposed in this rule. Requiring amateur-built UAS to comply with the performance requirements proposed in this rule would place an undue burden on the builders of these UAS. The FAA expects that amateur-built UAS will represent a very small portion of the total number of UAS operating in the airspace of the United States.

Nothing in this proposal would prevent a person from building a UAS

[70] Although this exception applies to UAS produced for the use of the United States Government, U.S. government entities would still be bound by the operating provisions of part 89, subpart B. Only the aircraft of the national defense forces of the United States are excepted from the aircraft registration requirements and not required to comply with subpart B. All other United States government entities who wish to use UAS without remote identification at a location other than an FAA-recognized identification area would be required to seek authorization from the Administrator to deviate from the operating provisions of subpart B.

with remote identification for educational or recreational purposes. However, a person doing so would be subject to all of the requirements of subpart F, even if the UAS would otherwise be considered an amateur-built UAS. For example, an individual may wish to design and produce their own standard remote identification UAS for educational or other purposes, procuring parts and components from multiple vendors. Under the proposed § 89.501(c), this person would be required to meet the requirements of subpart F including using a means of compliance that meets the requirements of proposed § 89.310.

The FAA is not proposing any restrictions on the sale, transfer of ownership, or lending of amateur-built UAS with or without remote identification to someone other than the person who originally built the UAS. For example, a person could lend his or her amateur-built UAS to another person on a temporary basis or sell it after he or she no longer intends to use it for personal operation. However, the new operators of such UAS would be required to comply with the applicable operating rules at all times, including the limitation to fly within an FAA-recognized identification area if the amateur-built UAS does not have remote identification.

The FAA anticipates that some UAS producers will wish to sell complete kits including all parts and instructions that would allow a person to assemble a fully functional UAS with remote identification. If the kit contains all the parts and instructions necessary to build a standard remote identification UAS or limited remote identification UAS, and the fully assembled UAS would meet the requirements of an FAA-accepted means of compliance, then the producer of the kit, not the person assembling the UAS from the kit, is considered the producer of the UAS and is subject to all of the design and production requirements of subpart F. A requirement for the owner to assemble some or all of the parts of a UAS fabricated by a particular company prior to flight would not turn that owner into a producer for purposes of subpart F when all the parts and instructions for assembly have been included for sale.

The FAA requests comments about whether persons should be allowed to produce kits for sale that contain 100 percent of the parts and the instructions for assembly necessary to build a fully functioning UAS without remote identification capability. Once assembled, such UAS without remote identification would be required to either have the unmanned aircraft weigh less than 0.55 pounds or operate only within an FAA-recognized identification area.

UAS that are designed and produced for the purpose of aeronautical research or showing compliance with regulations would not be required to meet the production requirements of the rule. The FAA intends this exception to allow for testing of prototype UAS not intended for sale without the requirement that the producer meet all of the production requirements of the proposed rule. Any person operating a UAS under this exception would still need to receive authorization from the Administrator to operate the UAS in accordance with § 89.120.

B. Requirement To Issue Serial Numbers

The FAA is proposing in § 89.505 to require the person responsible for the production of standard remote identification UAS or limited remote identification UAS to issue a serial number to each unmanned aircraft that complies with the ANSI/CTA–2063–A serial number standard. The FAA is proposing to adopt ANSI/CTA–2063–A as the serial number standard to be used by producers of UAS, and seeks comments on this approach. The FAA believes the standard is appropriate because it enables the issuance of unique serial numbers to UAS and promotes worldwide standardization of UAS remote identification requirements: The European Commission recently issued rules adopting this standard.[71]

The FAA seeks specific comment regarding whether this standard can be effectively used as a serial number standard for unmanned aircraft other than small unmanned aircraft.

1. American National Standards Institute/Consumer Technology Association Standard 2063–A

For the serial number, the FAA is proposing the use of American National Standards Institute/Consumer Technology Association standard 2063–A (ANSI/CTA–2063–A)—Small Unmanned Aerial Systems Serial Numbers (September 2019) for the format of the serial number. ANSI/CTA–2063–A outlines the elements and characteristics of a serial number to be used by small UAS.[72] The FAA is proposing the use of ANSI/CTA–2063–A as it has been specifically developed to provide a format for small UAS serial numbers. It is the only widely available standard for these serial numbers. Use of ANSI/CTA–2063–A would provide a single accepted format for serial numbers, helping to ensure consistency in transmission of this message element. The FAA seeks feedback from UAS manufacturers who are assigning serial numbers in accordance with ANSI/CTA–2063–A, including the type and number of UAS that the serial numbers are being assigned to.

2. Incorporation by Reference

The FAA is proposing to incorporate ANSI/CTA–2063–A by reference. The Office of the Federal Register has regulations concerning incorporation by reference. These regulations require that, for a final rule, agencies must discuss in the preamble to the rule the way in which materials that the agency incorporates by reference are reasonably available to interested persons, and how interested persons can obtain the materials. Additionally, the preamble to the rule must summarize the material.

Interested persons can view ANSI/CTA–2063–A at *https://www.cta.tech* by creating a free account and searching under ''Research and Standards''. At the time of publication of this notice of proposed rulemaking, the ANSI/CTA–2063–A standard is available for viewing and download free of charge. ANSI/CTA–2063–A is summarized in the immediately preceding section, 1. American National Standards Institute/Consumer Technology Association Standard 2063–A.

C. Requirement To Label UAS

The FAA proposes in § 89.515 that persons responsible for the production of standard remote identification UAS and limited remote identification UAS label each UAS with an indication of its remote identification capability and whether it is a standard remote identification UAS or a limited remote identification UAS. The FAA envisions such labels would be useful to UAS operators, FAA inspectors, investigators, and law enforcement agencies by communicating the capabilities and restrictions of a particular unmanned aircraft with respect to remote identification. The label would be affixed to the unmanned aircraft and would provide a simple and efficient way to determine the UAS capabilities. The FAA is not proposing a prescriptive labeling requirement that specifies exactly how a producer would label an aircraft, what size font to use, where the label would have to be located, and so on. Due to the variety of UAS models that exist, such a prescriptive

[71] Commission Delegated Regulation (EU) 2019/945 of 12 March 2019 on unmanned aircraft systems and on third-country operators of unmanned aircraft systems.

[72] ANSI/CTA–2063–A—Small Unmanned Aerial Systems Serial Numbers (September, 2019) available at *https://www.cta.tech.*

requirement would be unnecessarily limiting for UAS producers. Instead, a producer could label the aircraft by any means as long as the label is in English, legible, prominent, and permanently affixed to the unmanned aircraft.

D. Requirement for a UAS To Be Designed and Produced Using an FAA-Accepted Means of Compliance

According to proposed § 89.510(a)(1) and (3), no person would be allowed to produce a standard remote identification UAS or a limited remote identification UAS unless the person obtains FAA acceptance of the declaration of compliance. The declaration of compliance would establish that the UAS meets the minimum performance requirements for standard remote identification UAS or limited remote identification UAS because it was produced in accordance with an FAA-accepted means of compliance (see § 89.405) that meets the minimum performance requirements for standard remote identification UAS or limited remote identification UAS. Further, § 89.510(a)(2) would require persons responsible for the production of UAS to meet all requirements of subpart F.

E. Requirement To Submit a Declaration of Compliance

The FAA is proposing in § 89.520 that a person responsible for the production of standard remote identification UAS and limited remote identification UAS be required to submit a declaration of compliance for acceptance by the FAA. The declaration of compliance would affirm that the UAS meets the minimum performance requirements for remote identification by meeting all aspects of an FAA-accepted means of compliance (*e.g.,* a consensus standard) for UAS with remote identification equipment. The FAA would rely on the declaration of compliance to show that the UAS complied with the applicable remote identification requirements at the time the UAS was produced.

The FAA would not consider a declaration of compliance under this proposed rule to be an airworthiness certification. UAS that are certified under the 14 CFR part 21 Airworthiness Certification processes may have other identification requirements in addition to those being proposed in this rule.

1. Information Required for a Declaration of Compliance

Proposed § 89.520(b) lists the information that would be required to be included in a declaration of compliance submitted by a person responsible for the design or production of a standard remote identification UAS or limited remote identification UAS. This information would make clear to the FAA if the producer has demonstrated compliance with the remote identification equipage requirements.

The following information would be required in the declaration of compliance:

(1) The name, physical address, telephone number, and email address of the person responsible for production of the UAS.

(2) The UAS make and model name.

(3) The UAS serial number, or the range of serial numbers for which the person responsible for production is declaring compliance.

(4) The means of compliance used in the design and production of the UAS and whether the UAS is a standard remote identification UAS or a limited remote identification UAS.

(5) Whether the declaration of compliance is an initial declaration or an amended declaration, and if the declaration of compliance is an amended declaration, the reason for the amendment.

(6) A declaration that the person responsible for the production of the unmanned aircraft system can demonstrate that the UAS was designed and produced to meet the minimum performance requirements of § 89.310 or § 89.320 by using an FAA-accepted means of compliance.

(7) A declaration that the producer complies with the inspection, audit, and notification requirements of § 89.510(b).

(8) A declaration that the producer will perform independent audits on a recurring basis to demonstrate compliance with the requirements of subpart F of proposed part 89 and will provide the results of those audits to the FAA upon request.

(9) A declaration that the producer will maintain product support and notification procedures to notify the public and the FAA of any defect or condition that causes the UAS to no longer meet the requirements of subpart F, within 15 calendar days of the date the person becomes aware of the defect or condition.

The FAA invites comments on whether the previously discussed 15 calendar day notice period is appropriate for the public to gain awareness of any defect or condition that causes the UAS to no longer meet the requirements of subpart F.

2. Acceptance of a Declaration of Compliance

As proposed in § 89.525, after a person submits a declaration of compliance to the FAA, the Administrator would evaluate the declaration of compliance submitted and may request additional information (*e.g.,* test results) or documentation, as needed, to supplement the declaration of compliance. The FAA would evaluate the declaration of compliance to ensure completeness and compliance with the requirements of § 89.520(b). After the FAA has finished its evaluation, the FAA would notify the submitter whether the declaration of compliance has been accepted or not accepted. The FAA would also notify the submitter if it determines the submitter has not provided sufficient evidence to demonstrate compliance. The FAA would also provide a list of accepted declarations of compliance at *https://www.faa.gov.*

3. Rescission of FAA Acceptance of a Declaration of Compliance

Pursuant to proposed § 89.530, a declaration of compliance would be subject to ongoing review by the Administrator. The FAA would notify a person responsible for the production of standard remote identification UAS or limited remote identification UAS if a non-compliance issue has been identified prior to initiating a proceeding to rescind its acceptance of a declaration of compliance. If the Administrator determines that it is in the public interest, prior to rescinding acceptance of a declaration of compliance, the Administrator could provide a reasonable period of time for the person holding the declaration of compliance to remediate the noncompliance. A failure to remediate the noncompliance would result in the rescission of FAA's acceptance of the declaration of compliance.

As part of the rescission process, the FAA would notify the person who submitted the declaration of compliance of its decision to rescind its acceptance by sending a letter of rescission to the email address on file for such person or entity. The FAA would also send a notice of rescission to the registered owners of unmanned aircraft listed under a declaration of compliance that is no longer accepted by the FAA. Additionally, the FAA would publish a notice of rescission in the **Federal Register** to provide notice of the rescission to all interested or affected parties, which include: (a) The person holding the FAA-accepted declaration of compliance and (b) the owners and operators of unmanned aircraft listed in the no longer accepted declaration of compliance. Lastly, the FAA would publish at *https://www.faa.gov* a list of

declarations of compliance that are no longer accepted.

The FAA could rescind its acceptance of a declaration of compliance under circumstances including, but not limited to:

(1) A standard remote identification UAS or a limited remote identification UAS listed under an accepted declaration of compliance does not meet the minimum performance requirements of § 89.310 for standard remote identification UAS or of § 89.320 for limited remote identification UAS.

(2) A previously FAA-accepted declaration of compliance does not meet the requirements of subpart F of proposed part 89.

(3) The FAA rescinds its acceptance of a means of compliance listed in a declaration of compliance.

4. Petition To Reconsider the Rescission of FAA Acceptance of a Declaration of Compliance

The FAA proposes in § 89.530(b) to allow a person who submitted a declaration of compliance that is no longer accepted or any person adversely affected by the rescission of the Administrator's acceptance of that declaration of compliance to petition for a reconsideration of the decision to rescind its acceptance by submitting a request to the FAA. For purposes of the reconsideration, those adversely affected by the rescission of the Administrator's acceptance of a declaration of compliance includes the owners and operators of unmanned aircraft listed in the no longer accepted declaration of compliance.

A request for reconsideration would be required to be submitted to the FAA within 60 calendar days of publication in the **Federal Register** of a notice of rescission. A petition to reconsider the rescission of the Administrator's acceptance of a declaration of compliance would be required to show that the petitioner is an interested party and has been adversely affected by the decision of the FAA.

The petition for reconsideration would be required to demonstrate at least one of the following:

- The petitioner has a significant additional fact not previously presented to the FAA.
- The Administrator made a material error of fact in the decision to rescind its acceptance of the declaration of compliance.
- The Administrator did not correctly interpret a law, regulation, or precedent.

If the FAA chooses to reinstate its acceptance of a declaration of compliance, it would indicate so by notifying the petitioner, and the person who submitted the FAA-accepted declaration of compliance (if different). The FAA would also publish at *https://www.faa.gov* a list of declarations of compliance that have been reinstated.

5. Record Retention

The FAA is proposing in § 89.535 to require any person who submits a declaration of compliance to retain all of the following information for as long as the UAS listed on that declaration of compliance are produced plus an additional 24 calendar months:

- The means of compliance, all documentation, and substantiating data related to the means of compliance used.
- Records of all test results.
- Any other information necessary to demonstrate compliance with the means of compliance so that the UAS meets the remote identification requirements and the design and production requirements of this part.

The person submitting the declaration of compliance would be required to make the information available for inspection by the Administrator.

F. Accountability

After obtaining FAA acceptance of their declaration of compliance, the FAA expects persons responsible for the production of UAS to monitor all UAS produced under that declaration of compliance to ensure they comply with the remote identification requirements of the proposed rule. The FAA expects persons responsible for the production of UAS with remote identification to take remedial action whenever they become aware of a lack of compliance with the proposed design and production regulations.

If the FAA suspects, or becomes aware of, a lack of compliance with any of the requirements of the proposed rule, the person responsible for the production of the standard remote identification UAS or limited remote identification UAS would be required to allow the Administrator to inspect any associated facilities, technical data, or any UAS produced, and to witness any tests necessary to determine compliance with part 89. In addition to any inspection that may be required by the Administrator from time to time, the person responsible for the production of UAS with remote identification would be responsible for performing independent audits on a recurring basis to ensure that the standard remote identification UAS or limited remote identification UAS continue to comply with the remote identification requirements of proposed part 89. The FAA is not proposing a specific timeframe for the independent audits. It expects that the person responsible for the production of the UAS would apply industry best practices to determine when and how often independent audits are needed. However, the FAA believes these audits would have to occur on a regular basis and as many times as necessary to ensure continuous compliance with the technical requirements of the proposed rule. Additionally, all audit reports would have to be retained and would have to be provided to the FAA upon request. The FAA requests comments regarding appropriate time intervals for conducting independent audits, including any time intervals specified in industry standards related to independent audits of aviation systems.

As part of the independent audits, a person responsible for the production of UAS would be responsible for maintaining a product support and notification system and procedures to notify the public and the FAA of any defect or condition that may cause a standard remote identification UAS or limited remote identification UAS to no longer comply with the remote identification requirements of proposed part 89. To satisfy these obligations, persons responsible for the production of UAS would have to monitor their manufacturing processes, UAS operational usage to the extent the manufacturer has access to such information, and collection of accident and incident data. The FAA expects that as part of the monitoring process, producers would collect, analyze, and provide to the FAA any information that is furnished by the owners and operators of the UAS with remote identification. If the FAA identifies a safety issue that warrants review of a producer's data, records, or facilities, the producers would have to grant the FAA access to such data, records, or facilities, and would have to provide all data and reports from the independent audits and investigations.

XIV. Remote Identification UAS Service Suppliers

The operating rules in subpart B of part 89 would require persons operating a standard remote identification UAS or limited remote identification UAS to transmit the remote identification message elements through an internet connection to an FAA-qualified Remote ID USS. The FAA intends to provide oversight of the Remote ID USS through contractual agreements and is therefore not proposing specific rules related to how the Remote ID USS offer services. This section provides background information so that persons operating

standard remote identification UAS or limited remote identification UAS may understand what the FAA expects a Remote ID USS would be and how it would be required to provide services to be FAA-qualified.

A. UAS Service Suppliers (USS)

As the FAA looks to innovative solutions to develop UAS traffic management (UTM), the FAA is partnering with third parties referred to as UAS Service Suppliers (USS). This proposal defines a USS as any person (*e.g.,* governmental or non-governmental entity) that is qualified by the Administrator to provide aviation related services to UAS. The FAA anticipates that some USS may choose to offer a suite of different services, while others may choose to specialize in one service.

The FAA already has leveraged the USS concept successfully in the implementation of the Low Altitude Authorization and Notification Capability (LAANC).[73] In qualifying a USS to be a LAANC service provider, the FAA uses its acquisition authority to enter into a Memorandum of Agreement (MOA) with the USS. All prospective USS go through an onboarding process to become qualified and agree to abide by a set of documented terms and conditions regarding the technical administration of the service and how it is administered to the public.[74] See 49 U.S.C. 106(l) and (m). The LAANC USS are fully responsible for the development and operation of the software applications; the FAA does not provide payment for the development or operation of LAANC USS products or services. Congress affirmed the USS model for future UTM-related services in the FAA Reauthorization Act of 2018. Section 376 of Public Law 115–254 recommended that the FAA use the LAANC model of private sector participation in implementing future expanded UTM services. The FAA is proposing to use a similar strategy for remote identification.

B. Remote ID USS

A Remote ID USS would be a person or entity qualified by the FAA to provide remote identification services to UAS. A Remote ID USS would perform four primary functions: (1) Collect and store the remote identification message elements; (2) provide identification services on behalf of the UAS operator and act as the UAS operator's access point to identification services; (3) provide the FAA access to the remote identification information collected and stored upon request through a data connection that may be on-demand or a continuous connection depending on safety and security needs; and (4) inform the FAA when its services are active and inactive.

Although a USS may be qualified as both a Remote ID USS and a LAANC USS, the services provided and the terms for providing each service would be independent from one another. Although the FAA anticipates that most Remote ID USS would offer their services to the general public, a Remote ID USS, such as an operator of multiple routine unmanned aircraft flights, may choose to provide remote identification services only for its own fleet. Additionally, the FAA expects that the majority of Remote ID USS would likely come from private industry; however, the FAA anticipates other Federal agencies may consider creating a Remote ID USS to manage their own flights. Although some Remote ID USS may choose to offer their services for free, Remote ID USS may have a variety of business models and may choose to require a subscription, payment, or personal information to access that Remote ID USS.

The FAA does not propose to require a Remote ID USS be universally compatible with all UAS. That said, the FAA anticipates that some UAS manufacturers will also be Remote ID USS. In those cases, the Remote ID USS may choose to only connect to UAS made by the same manufacturer. This model is similar to how mobile telephone networks sell devices that can only be used on their networks. The FAA requests comment on whether manufacturers should be permitted to produce UAS that are only compatible with a particular Remote ID USS.

Persons operating UAS with remote identification would be required to interact with a Remote ID USS. The FAA envisions that a UAS operator would connect to the Remote ID USS through the internet using a variety of different technologies, such as cellular phone applications, web-based interfaces, or other tools. The FAA expects some Remote ID USS may provide UAS operators with a session ID that would be used in place of the unmanned aircraft serial number to satisfy the UAS Identification message element requirement. Such Remote ID USS would be responsible for generating (and maintaining) the session IDs.

To ensure safety in the airspace of the United States, the FAA may require access to the remote identification message elements transmitted by UAS with remote identification to Remote ID USS. This request may take the form of an individual query or a continuous connection to the Remote ID USS. In addition, the FAA anticipates providing that information, to other airspace users, authorized Federal Government partners, and law enforcement entities as discussed in section XI of this preamble. Upon request, a Remote ID USS would be required to provide the FAA: (1) The near real-time remote identification message elements that meet the minimum message element performance requirements discussed in sections XII.C and XII.D.11 of this preamble; and (2) stored remote identification data.

Under proposed § 89.135, the Administrator would contractually require that Remote ID USS retain the remote identification message elements for no more or less than six months from the date of receiving the message elements. For enforcement actions against certificate holders under 49 U.S.C. 44709, the Administrator has six months to notify the respondent that the FAA will be pursuing enforcement action against him or her pursuant to 49 CFR 821.33. The FAA believes that a six-month retention period is the minimum amount of time the FAA needs to access the remote identification message elements from the Remote ID USS. Additionally, the FAA believes that six months represents a balance between security and law enforcement purposes on the one hand and privacy interests on the other. The FAA requests comments on whether six months should be the period for retention of the remote identification message elements by Remote ID USS.

One critical element of implementing remote identification would be the establishment of a cooperative data exchange mechanism between the FAA and Remote ID USS. On December 20, 2018, the FAA issued a Request for Information (RFI), seeking industry participation in developing remote identification information technology applications and informing the Remote ID USS technical terms and conditions.[75] Working with an industry group selected through the RFI, the FAA intends to establish the technological

[73] LAANC automates significant portions of the application and approval process for airspace authorizations through an electronic data exchange with third party USS.

[74] The terms and conditions the LAANC USS agree to be bound by are available at: *https://www.faa.gov/uas/programs_partnerships/uas_data_exchange/industry/media/uss_operating_rules.pdf.*

[75] The FAA UAS Remote Identification Request for Information (RFI), issued December 20, 2018 and amended January 31, 2019 is available at *https://faaco.faa.gov/index.cfm/announcement/view/32514.*

interfaces between Remote ID USS and the FAA, and demonstrate and evaluate a prototype remote identification capability. The FAA anticipates that Remote ID USS will be available to the public by the effective date of the final rule.

C. Data Privacy and Information Security

The remote identification message elements that operators would be required to transmit to a Remote ID USS under this rule would be considered publicly accessible information. However, the FAA recognizes the need for privacy of other information that may be voluntarily provided to a Remote ID USS by an operator, particularly where an operator would use the Remote ID USS for other value-added services. The FAA would not have access to information collected by Remote ID USS other than the remote identification information required by this rule.

The MOA signed by Remote ID USS would require it to agree to privacy protections of any data that the Remote ID USS would not have received but for its qualification as a Remote ID USS. This data would include personally identifiable information received from operators. The FAA expects that the MOA would require user permission for any data sharing or additional information gathered by the Remote ID USS. Prospective Remote ID USS would also be reviewed for consistency with national security and cybersecurity requirements and export administration regulations.

The remote identification message elements transmitted by a standard remote identification UAS or limited remote identification UAS to a Remote ID USS may be available to the general public. Remote ID USS would be required to provide to the public, for no cost, the UAS Identification message element, either the UAS serial number or session ID. At this time, the FAA does not intend to make registration data held under 14 CFR part 48 available to Remote ID USS or the general public. The FAA would provide registration data associated with a particular serial number or session ID only to law enforcement or the Federal Government. The FAA welcomes comments on whether it should provide some fields in the registration database to some or all Remote ID USS for use by law enforcement or the Federal Government.

For standard remote identification UAS, in addition to transmitting the message elements to the Remote ID USS, the unmanned aircraft would broadcast the message elements using radio frequency spectrum in accordance with 47 CFR part 15 that is compatible with personal wireless devices. This means that any of the message elements that are broadcast directly from the unmanned aircraft could be received by commonly available consumer cellular phone, tablet, or other wireless device capable of receiving that broadcast. Therefore, any message element that is broadcast would be publicly available.

All FAA information systems are bound by the security standards found in FAA Order 1370.121, FAA Information Security and Privacy Program & Policy. This order defines the minimum standards for data encryption, privacy protection, and cybersecurity controls. To address the security of information maintained by third party systems (*e.g.,* USS information systems), the FAA would adopt National Institute of Standards and Technology (NIST) standards to ensure compliance with their requirements and guidelines where appropriate and would include them in the technical parameters required by the MOA. The Remote ID USS and UAS producers would be responsible for ensuring that UAS remote identification data and connections would be protected against cyber-attacks.

XV. FAA-Recognized Identification Areas

The FAA is proposing a means for UAS that do not meet the requirements of standard remote identification UAS under § 89.110 or limited remote identification UAS under § 89.115 to comply with the intent of this rule. In § 89.120, the FAA is proposing to allow UAS to operate without remote identification equipment if they do so within visual line of sight and within certain defined geographic areas approved by the FAA, called FAA-recognized identification areas. For UAS not equipped with Remote ID, the way to identify and comply with the intent of the remote identification rule is to operate within the FAA-recognized identification areas. The intent is to minimize the regulatory burden for operators of UAS that do not have remote identification equipment, while still meeting the intent of the rule. This proposal would not preclude UAS with remote identification from operating in or transiting the airspace over FAA-recognized identification areas; it would simply limit UAS with no remote identification equipment from operating anywhere else.

UAS with remote identification equipment that operate in or transit the airspace over FAA-recognized identification areas would be required to comply with the applicable remote identification requirements in § 89.105(a) for standard remote identification UAS or § 89.105(b) for limited remote identification UAS. Some UAS manufacturers may offer an option to modify a UAS originally manufactured without remote identification to become compliant with the requirements for a standard remote identification UAS or limited remote identification UAS. For example, a UAS manufacturer may offer a software update that would turn the UAS into a standard or limited remote identification UAS. A UAS that is modified to have remote identification capability must remotely identify throughout its operation, regardless of where it is operated. This means that the operator of a modified UAS would have to follow the requirements for remotely identifying everywhere, even when flying at FAA-recognized identification areas, including transmitting to a Remote ID USS. Operators of modified UAS would be required to subscribe to a Remote ID USS to operate anywhere where internet connectivity is available, including within an FAA-recognized identification area. The FAA seeks comments on this requirement.

The FAA recognizes that UAS flying sites exist today without a significant impact on aviation safety. As proposed in § 89.205, only a community based organization (CBO) recognized by the Administrator would be eligible to apply for the establishment of a flying site as an FAA-recognized identification area to enable operations of UAS without remote identification within those areas. For clarification purposes, the concept of FAA-recognized identification areas proposed in this rule is different and independent from the fixed-site concept in 49 U.S.C. 44809(c)(1) and a fixed site would not automatically be approved as an FAA-recognized identification area.

The FAA would maintain a list of FAA-recognized identification areas at *https://www.faa.gov.* The location of FAA-recognized identification areas would be made available to the public to: (1) Advise UAS operators of where operations of UAS without remote identification are permitted; (2) advise both manned and unmanned aircraft operators of where operations of UAS without remote identification are taking place; and (3) inform security and law enforcement agencies of where operations of UAS without remote identification are taking place. Operators of UAS with remote identification would be able to avoid these locations if they prefer to operate

in areas where there are no UAS without remote identification. Law enforcement and security personnel would be able to identify if a suspect UAS has remote identification and, if not, determine if it is legally operating within an FAA-recognized identification area.

The FAA is proposing to accept applications for FAA-recognized identification areas within 12 calendar months of the effective date of a final rule. At the end of that 12-month period, no new applications for FAA-recognized identification areas would be accepted. After that date, the number of FAA-recognized identification areas could therefore only remain the same or decrease. Over time, the FAA anticipates that most UAS without remote identification will reach the end of their useful lives or be phased out. As these numbers dwindle, and as compliance with remote identification requirements becomes cheaper and easier, the number of UAS that need to operate only at FAA-recognized identification areas would likely drop significantly.

Operating within FAA-recognized identification areas would not provide relief from other applicable Federal, State, or local laws, ordinances, or regulations, nor would they provide any authorization to operate. Operators would remain obligated to comply with all relevant requirements. The FAA is not proposing any additional or specific operating rules for operations within the bounds of FAA-recognized identification areas.

A. Eligibility

The FAA proposes in § 89.205 to only allow a CBO recognized by the Administrator to apply for the establishment of an FAA-recognized identification area. For purposes of this rule, a CBO shall have the meaning ascribed to the term in 49 U.S.C. 44809.[76]

Persons requesting the establishment of an FAA-recognized identification area would do so using an online process. The FAA is currently working on Advisory Circular (AC) 91–57C, Unmanned Aircraft Systems—Recreational Operating Standards, which, among other things, provides the process by which the FAA will recognize an organization as a Community Based Organization (CBO). The matters addressed in AC 91–57C directly relate to areas beyond remote identification of unmanned aircraft systems (*e.g.,* limited recreational operations of unmanned aircraft) so the FAA intends to publish AC 91–57C in an independent docket for public comment and expects to finalize it prior to the publication of the final rule that follows this notice of proposed rulemaking. One person would be permitted to request multiple sites be established, provided that person could demonstrate that he or she has the authority to request establishment on behalf of each site.

B. Process To Request an FAA-Recognized Identification Area

Under the proposed § 89.210, a request to establish an FAA-recognized identification area would have to be submitted within 12 calendar months from the effective date of a final rule and would have to include certain specified information, including at a minimum:

- The name of the CBO requesting the FAA-recognized identification area.
- A declaration that the person making the request has the authority to act on behalf of the CBO.
- The name and contact information of the primary point of contact for communications with the FAA.
- The physical address of the proposed FAA-recognized identification area.
- The latitude and longitude coordinates delineating the geographic boundaries of the proposed FAA-recognized identification area.
- If applicable, a copy of any existing letter of agreement regarding the flying site.[77]

The process to request establishment of an FAA-recognized identification area would include an FAA review of each application to verify safety, security, and eligibility criteria are met. The FAA could require additional information or documentation, as needed, to supplement the request for establishment of an FAA-recognized identification area. Under § 89.215, the Administrator may take into consideration the following matters when reviewing a request for establishment of an FAA-recognized identification area:

- The effects on existing or contemplated airspace capacity.
- The effect on critical infrastructure, existing or proposed manmade objects, natural objects, or the existing use of the land, within or close to the FAA-recognized identification area.
- The safe and efficient use of airspace by other aircraft.
- The safety and security of persons or property on the ground.

The FAA would maintain a list of FAA-recognized identification areas at *https://www.faa.gov.*

The FAA solicits comment on whether the proposed 12 month deadline for applying for an FAA-recognized identification area should be extended. The responses should include specific reasons for why or why not the time period should be extended.

C. Amendment

Under § 89.220, any change to the information submitted in a request for establishment of an FAA-recognized identification area would have to be submitted to the FAA within 10 calendar days of the change. Such changes would include, but not be limited to, a change to the point of contact for the FAA-recognized identification area, or a change to the CBO's affiliation with the FAA-recognized identification area. A request to change the geographic boundaries of the FAA-recognized identification area may be submitted to the FAA for review and approval. Any change to the information submitted to the Administrator would be reviewed under § 89.215 and could result in the termination of the FAA-recognized identification area pursuant to § 89.230. The FAA may terminate an FAA-recognized identification area for cause or upon a finding that the FAA-recognized identification area may pose a risk to aviation safety, public safety, or national security, a finding that the FAA-recognized identification area is no longer associated with a community based organization recognized by the Administrator, or a finding that the person who submitted a request for establishment of an FAA-recognized identification area provided false or

[76] 49 U.S.C. 44809 defines a ''community based organization'' as a membership-based association entity that—(1) is described in section 501(c)(3) of the Internal Revenue Code of 1986; (2) is exempt from tax under section 501(a) of the Internal Revenue Code of 1986; (3) the mission of which is demonstrably the furtherance of model aviation; (4) provides a comprehensive set of safety guidelines for all aspects of model aviation addressing the assembly and operation of model aircraft and that emphasize safe aeromodelling operations within the national airspace system and the protection and safety of individuals and property on the ground, and may provide a comprehensive set of safety rules and programming for the operation of unmanned aircraft that have the advanced flight capabilities enabling active, sustained, and controlled navigation of the aircraft beyond visual line of sight of the operator; (5) provides programming and support for any local charter organizations, affiliates, or clubs; and (6) provides assistance and support in the development and operation of locally designated model aircraft flying sites.

[77] Facility guidance for development of letters of agreement is outlined in FAA JO 7210.3, Chapter 4, Section 3. Letters of agreement are formally developed between the ATC facility and the CBO. They establish items such as the CBO operating areas (horizontal/vertical dimensions), coordination procedures, hours of operation, and emergency procedures (*e.g.,* lost link).

misleading information during the submission, amendment, or renewal process.

D. Duration of an FAA-Recognized Identification Area

Under proposed § 89.225, the term of an FAA-recognized identification area would be 48 calendar months after the date the FAA approves the request for establishment of an FAA-recognized identification area.

A person wishing to renew the establishment of an FAA-recognized identification area would have to submit a request for renewal no later than 120 days before the expiration date. If a request for renewal is submitted after that time but prior to the expiration date, the Administrator could choose not to consider the request. Requests for renewal submitted after the expiration date of the designation would not be considered by the Administrator.

E. Expiration and Termination

Unless renewed, an FAA-recognized identification area would be automatically cancelled as of the day immediately after its expiration date.

Under proposed § 89.230(b)(1), if a CBO wanted to terminate an FAA-recognized identification area prior to the expiration date, it would do so by submitting a request for termination to the Administrator. Once the CBO has terminated an FAA-recognized identification area, the CBO may not reapply to have that flying site reestablished as an FAA-recognized identification area and that site would no longer be eligible to be an FAA-recognized identification area. The FAA seeks comment on this approach.

Under proposed § 89.230(b)(2), the FAA would be able to terminate an FAA-recognized identification area for any reason, including but not limited to a finding that the designation could pose a risk to aviation safety, public safety, or national security or that the person who submitted a request for establishment of an FAA-recognized identification area provided false or misleading information during the submission, amendment, or renewal process. Once an FAA-recognized identification area is terminated by the FAA, a CBO may not reapply to have the associated flying site reestablished as an FAA-recognized identification area.

F. Petition To Reconsider the FAA's Decision To Terminate and FAA-Recognized Identification Area

Under § 89.230(c), a person whose FAA-recognized identification area has been terminated by the FAA would be able to petition for reconsideration by submitting a request for reconsideration within 30 calendar days of the date of issuance of the termination.

XVI. Use of ADS–B Out and Transponders

Section 91.225 requires aircraft to be equipped with ADS–B Out by the year 2020 when operating in certain parts of the airspace of the United States, including Class A, Class B, Class C, and Class E airspace above 10,000 feet mean sea level. Additionally, any aircraft equipped with ADS–B Out must have that equipment on and operating at all times, regardless of airspace. UAS operated under part 107 are not required to meet the part 91 ADS–B Out equipage requirement but are currently not prohibited from doing so.

A recent study showed that the existing ADS–B frequencies cannot support the projected number of UAS operations, which is likely to vastly exceed estimates for future manned aircraft operations (*e.g.,* unmanned aircraft counts could be 5–10 times that of manned aircraft in the same airspace volume).[78] This study's projections led the FAA to reevaluate current regulations and policies regarding ADS–B Out for UAS. The FAA is concerned that the potential proliferation of ADS–B Out transmitters on UAS may negatively affect the safe operation of manned aircraft in the airspace of the United States.

The current ADS–B system (which uses two radio frequencies: 978 megahertz (MHz) and 1090 MHz) does not have capacity for significant growth. The 1090 MHz frequency is also used by the Air Traffic Control Radio Beacon System (ATCRBS), Traffic Alert and Collision Avoidance System (TCAS), and Department of Defense IFF (Identification, Friend or Foe) systems. These systems are already experiencing interference and other issues in high density areas such as the Northeast corridor and the Los Angeles area. The 1090 MHz frequency is significantly more congested than the 978 MHz frequency. The study also looked at the ability of the 978 MHz frequency to support small UAS operations using reduced power 978 MHz ADS–B Out avionics.[79] This study concluded that, based on the projected number of small unmanned aircraft to be in operation going forward, 978 MHz could become unusable for manned aircraft in some areas and blind some FAA ADS–B ground stations, interfering with the ability of the FAA to provide ATC separation services. Thus, the FAA concluded that the widespread use of ADS–B Out for unmanned aircraft, on either 978 or 1090 MHz, would interfere with the safe operation of manned aircraft in the airspace of the United States.

The FAA is proposing changes to 14 CFR part 91. Under the proposed changes, UAS operating under part 91 would no longer be mandated to equip with ADS–B Out. However, there are certain UAS operations for which ADS–B Out would be necessary due to existing airspace equipage requirements or operational necessities. The FAA proposes to require UAS to operate ADS–B Out in transmit mode when the person operating UAS is engaged in two-way radio communication with air traffic control and the operation is conducted under a flight plan. Additionally, the FAA is proposing to allow the Administrator to authorize the use of ADS–B Out when appropriate. The FAA envisions that certain unmanned aircraft receiving ATC services, such as large UAS operating at high altitudes, would need to be equipped with ADS–B Out because they will routinely be inhabiting the same airspace as manned aircraft and will need to be participating in the same air traffic control systems.

To implement these changes in the specific operating rules, the FAA is proposing to amend § 91.215 to prohibit persons from operating an unmanned aircraft under part 91 with a transponder on, unless the operation is conducted under a flight plan and the person operating the unmanned aircraft system maintains two-way radio communication with air traffic control or unless otherwise authorized by the Administrator.

The FAA is proposing changes to 14 CFR part 107 to generally prohibit unmanned aircraft from operating with ADS–B Out. The FAA envisions that remote identification would provide a similar safety function for unmanned aircraft and provide similar situational awareness to various stakeholders. The prohibition would allow ADS–B to continue to enable the safety of airspace for manned aircraft going forward. However, the proposal does not prohibit the use of ADS–B In, if the ADS–B In equipment is manufactured and installed in accordance with FAA requirements and guidance.[80]

[78] Guterres, Michael; Jones, Stanley; Orrell, Greg and Strain, Robert. ''ADS–B Surveillance System Performance With Small UAS at Low Altitudes'', AIAA Information Systems-AIAA Infotech @ Aerospace, AIAA SciTech Forum, (AIAA 2017–1154). *https://doi.org/10.2514/6.2017-1154.*

[79] Id.

[80] See Advisory Circulars 20–172B and 90–114A.

The FAA is proposing to add §§ 107.52 and 107.53 in part 107, to prohibit persons from operating a small unmanned aircraft with a transponder on or with ADS–B Out equipment in transmit mode, unless otherwise authorized by the Administrator. These changes are in addition to the proposed § 89.125 prohibition against using ADS–B Out equipment to comply with the remote identification requirements of part 89.

XVII. Proposed Effective and Compliance Dates

The sooner the remote identification of UAS is required, the sooner law enforcement, security partners, public safety personnel, and the FAA would be able to locate unsafe and careless operators, bring an end to the unsafe activity, and educate or conduct enforcement actions as needed. Until the remote identification of UAS can be implemented, most allegedly unauthorized UAS sightings remain unverified; incidents remain unsolved; and operator intention remains unknown, leaving it unclear if the operator is being careless or is engaged in nefarious activity. Without the remote identification of UAS, security and law enforcement agencies are left with few options to stop the unauthorized activity and address the safety or security risk potentially posed by the errant or malicious UAS operation.

The FAA believes expedited implementation and effectivity of this NPRM would protect the interests of operators of manned aircraft, compliant UAS operators, and the security agencies charged with protecting lives and property on the ground. Additionally, due to the essential role of remote identification of UAS in contributing to the safety and efficiency of the airspace, and its role as a critical tool in a robust UAS protection security regime, the FAA believes the remote identification of UAS must be implemented as quickly as possible. In addition, UAS remote identification is a foundational building block of UTM and a key stepping stone to the future ability to conduct routine BVLOS operations.

The FAA proposes a number of requirements for operators and producers of UAS with remote identification. This rule also includes proposed requirements for applying for FAA-recognized identification areas. As with most new regulations, the FAA recognizes that some elements of this proposal would take time to fully implement. The FAA also recognizes it would need to quickly implement requirements that address ongoing safety and security needs. Therefore, the FAA proposes that a final rule finalizing remote identification requirements would become effective on the first day of the calendar month following 60 days from the date of publication of the final rule that follows this proposal.

The FAA finds that CBOs can begin to identify flying sites that they may wish to apply to have established as FAA-recognized identification areas immediately. This proposal allows time for CBOs to evaluate their needs and organize their applications for establishment of their flying sites as FAA-recognized identification areas. For that reason, the proposal includes a 12 calendar month period after the effective date of the rule to make that application. Applications made before the effective date of the rule, or after the 12-month period, would not be considered.

Persons responsible for the production of UAS would not be able to submit declarations of compliance until the FAA accepts at least one means of compliance. Once a means of compliance is accepted by the FAA, persons responsible for the production of UAS would need time to design, develop, and test UAS using that means of compliance. For that reason, the proposal includes a 24-month period before compliance with the production requirements proposed in this rule is required. During this 24-month period, UAS without remote identification can continue to be produced, sold, and operated in the United States. It also provides time for the development and deployment of Remote ID USS to support the requirements of the proposed rule. Prior to the 24-month compliance date, this proposal allows for the production and operation of both UAS with and without remote identification.

Requirements that prohibit operation of UAS without remote identification would begin 36 months after the effective date of the rule. This 36-month period runs concurrently with the 24-month period provided for the development of means of compliance, and for the design, production, and sale of UAS with remote identification. Once UAS with remote identification are widely available, this proposal would allow an additional one- year period of time for UAS owners and operators to purchase and transition to operations of UAS with remote identification.

The FAA is seeking comments about whether certain UAS operations currently conducted under waiver, such as operations over people or nighttime operations, should be required to comply with remote identification prior to being authorized under a waiver or regulation. For example, should the FAA require UAS to comply with remote identification as a condition precedent to granting a nighttime waiver or authorizing operations over people?

The following are the FAA's proposed compliance dates:

TABLE 5—PROPOSED COMPLIANCE DATES

Requirement	Compliance date
Any non-excepted unmanned aircraft weighing more than 0.55 pounds must have an FAA-accepted declaration of compliance (89.510).	First day of the month following 24 months after the effective date.
Serial number added to unmanned aircraft registration.	
Requirement to remotely identify (89.105)	First day of the month following 36 months after the effective date.
The serial number of any UA required to be registered must be listed on an FAA-accepted declaration of compliance or the UA can only be flown within an FAA-recognized identification area (89.110(c)(1) and 89.115(c)(1)).	First day of the month following 36 months after the effective date.
Submit an application for establishment of an FAA-recognized identification area (89.210).	First day of the month following 12 months after the effective date.

The FAA believes that early compliance may benefit both industry and UAS operators and encourages regulated parties to implement remote identification of UAS sooner than the compliance dates established in this proposed rule. The FAA invites comments providing specific proposals and ideas on how to build an early

compliance framework into the regulation. The agency is interested in comments related to how an early compliance framework would work and how it would fit into the overarching remote identification framework proposed by the FAA.

The FAA would also consider providing incentives that the FAA can reasonably provide to parties that adopt remote identification as early as possible. The FAA invites comments on possible incentives for early compliance.

XVIII. Proposed Guidance Documents

The FAA is proposing several guidance documents to supplement the requirements proposed in this rule. Copies of the draft guidance documents are included in the docket for this rulemaking. The FAA invites comments regarding these draft advisory materials.

The FAA is proposing a new advisory circular, *Means of Compliance Process for Remote* Identification *of Unmanned Aircraft Systems.* This advisory circular provides guidance on the means of compliance process described in part 89. This AC outlines the required information for submitting a means of compliance.

The FAA is proposing a new Advisory Circular, *Declaration of Compliance Process for Remote Identification of Unmanned Aircraft Systems.* This advisory circular provides guidance on the declaration of compliance process described in part 89. This AC outlines the required information for submitting a declaration of compliance.

The FAA is proposing to revise AC 107–2, Small Unmanned Aircraft Systems, to describe the requirements of remote identification. The draft AC also describes where the various small UAS would be permitted to operate.

As noted, the FAA would update the Airman Certification Standards and remote pilot test questions to reflect the new regulatory requirements regarding remote identification.

The FAA is proposing a new Advisory Circular for FAA-recognized identification areas. This advisory circular provides guidance to persons requesting the establishment of an FAA-recognized identification area under § 89.210. This AC also provides guidance for persons responsible for FAA-recognized identification areas, as well as persons operating UAS at FAA-recognized identification areas under § 89.120.

XIX. Regulatory Notices and Analyses

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act of 1979 (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). The FAA has provided a more detailed Preliminary Regulatory Impact Analysis of this proposed rule in the docket of this rulemaking. This portion of the preamble summarizes this analysis.

In conducting these analyses, the FAA has determined that this proposed rule: (1) Has benefits that justify its costs; (2) is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866; (3) will have a significant economic impact on a substantial number of small entities; (4) will not create unnecessary obstacles to the foreign commerce of the United States; and (5) will not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the threshold identified above.

A. Regulatory Evaluation

1. Key Assumptions and Data Sources

The FAA's analysis of the proposed rule is based on findings from the Unmanned Aircraft Systems Identification and Tracking Aviation Rulemaking Committee (UAS–ID ARC), as well as data and information from the FAA and industry stakeholders. The analysis for the regulatory evaluation is based on the following assumptions and data sources:

A. Retrofits

An important assumption used in this analysis involves the availability of retrofits. Based on information from UAS producers,[81] part of the existing fleet of UAS could be retrofit to comply with remote identification requirements with relative ease and minimal cost (*e.g.,* by a software update or ''push'' through the internet) and this could be achieved within the first year after the effective date of the final rule given the availability of FAA-accepted means of compliance.[82] This would enable early compliance with remote identification for persons operating a portion of the existing UAS fleet and those UAS purchased during the proposal's 24-month period before compliance with production requirements.

Based on industry information and market research, the FAA estimates at least 93% of the current part 107 fleet and at least 20% of the current recreational fleet would be eligible for retrofits, thus minimizing the costs for operators and producers.[83] This is based on industry information suggesting that small UAS at a certain level of design specification and operational capability would likely have system and connectivity capabilities that could be retrofit through a software update.

The FAA reviewed UAS registered to part 107 operators and found 93% of the existing part 107 UAS fleet may have technical capabilities to be retrofit based on information received by industry (*i.e.,* could support software updates through internet).[84] The FAA identified

[81] The FAA received information from industry on the potential to retrofit during Executive Order 12866 meetings from September through December, 2019. Information from these meetings will be available in the docket of this rulemaking. Under Executive Order 12866, OIRA meets on regulatory actions with any interested party to discuss issues on a rule under review. Under OIRA procedures, the OIRA Administrator or his/her designee meets with outside parties during a review and the subject, date, and participants of the meeting are publicly disclosed on Reginfo.gov along with any written materials received from outside parties on rules under review (*https://reginfo.gov/public/do/eo/neweomeeting*).

[82] Producers of UAS with Remote ID, including those that retrofit, would be required to meet proposed performance standards using an FAA-accepted means of compliance for remote identification.

[83] Assuming retrofits can be made under an FAA-accepted means of compliance, some producers would not need to delay compliance. Retrofits may indicate producers need less modification of existing UAS models to comply with the proposal. In addition, the availability of retrofits would minimize impacts for some operators of UAS purchased without remote identification equipment who would otherwise need to upgrade or buy a new UAS equipped for Remote ID, especially those operated under part 107 for commercial purposes that would not receive any commercial value or benefit from operating at an FAA-recognized identification area.

[84] This is 93% of the part 107 ''consumer'' grade aircraft could be retrofit. Additionally, the FAA assumes the entire fleet of part 107 ''professional'' grade UAS could be retrofit.

the top-10 registered aircraft by producer and researched registered model specifications online. The FAA found each of the registered models within this group had internet and Wi-Fi connectivity, ability to transmit data, receive software uploads, and had radio frequency transceivers, among other technology such as advanced microprocessors. Figure 1 provides the breakdown of manufacturers of registered part 107 UAS that could retrofit representing 93% of part 107 registered UAS fleet.

FIGURE 1—PART 107 UNMANNED AIRCRAFT REGISTRATIONS BY MANUFACTURER

Producer/manufacturer	UAS registrations—part 107	Percent share of total	Cumulative percent share
DJI	252,678	78.1	78.1
Intel	13,147	4.1	82.2
Yuneec	9,725	3.0	85.2
Parrot	7,928	2.5	87.7
GoPro	5,980	1.8	89.5
3dr	4,687	1.4	91.0
Holy Stone	2,580	0.8	91.8
Autel	2,677	0.8	92.6
Hubsan	1,278	0.4	93.0
Kespry	1,143	0.4	93.3

Source: FAA, part 107 UAS Registrations, October 2019 point-in-time count.

The FAA has limited information on the manufacturers and types of UAS in the recreation fleet because part 48 registration currently allows limited recreational flyers to register multiple small unmanned aircraft under a single Certificate of Aircraft Registration. However, published market information finds 36% of the North America fleet is manufactured by one producer (DJI) [85] that provided information to the FAA suggesting they could retrofit. The FAA estimates that about 20% of the recreational fleet is comprised of aircraft manufactured by DJI that could be retrofit. This estimate was developed by multiplying the combined part 107 and recreational unmanned aircraft fleet by 36%, and then subtracting DJI aircraft registered under part 107.[86]

Therefore, the FAA assumes UAS purchased in year 1 that are retrofit would allow the aircraft to ''continue flying'' under the limited or standard remote identification requirements after the compliance date of the final rule. UAS sold in year 1 that could not be retrofit would likely not meet the limited or standard remote identification requirements after year 3. Persons that own unmanned aircraft in this group of ''legacy'' UAS without remote identification equipment would have potential ''loss of use'' associated impacts since this proposal does not include grandfathering.[87] The retrofit assumptions above were used in this analysis to estimate the effects of retrofits on the costs of the proposal and its compliance period.

The FAA requests comments on the capability of retrofits to meet the proposed remote identification requirements. Specifically, the FAA requests information and data from producers of affected UAS in response to the following questions that can be used to inform this analysis. Please provide references and sources for information and data.

- As a producer of UAS affected by this proposal, would you be able to retrofit your current UAS models to comply with the proposed rule given the availability of FAA-accepted means of compliance?
- Do you have information that would assist in the early development of means of compliance that would be available for retrofits for the following scenarios a) before the effective date of the final rule, which is 60 days after the publication date of the final rule, and b) within one year after effective date of the final rule?
- Would it be possible to retrofit by a software or firmware update through an internet download?
- How would a retrofit solution meet the proposed tamper resistance and labelling requirements? Would a software push be able to meet requirements for tamper resistance or would it require hardware? How would you meet labelling requirements under a retrofit scenario (*e.g.,* would you mail the label)?
- Would retrofits meet the limited or standard remote identification requirements?
- What are the costs of retrofits to the producer and the owner/operator?
- In lieu of a software push through the internet, what other methods could producers use to facilitate retrofits (*e.g.,* mail-in programs or physical retrofit drop-off locations)?
- If retrofits are not an option for certain makes and models, would you offer operators ''buy-back'' or ''trade-in'' incentives to replace UAS without remote identification equipment? If so, please describe the incentive and the process.
- The FAA also solicits comments on the capability of producers of UAS weighing greater than 55 pounds to retrofit aircraft to be compliant with remote identification requirements.

B. Period of Analysis & Valuation of Impacts

- The analysis uses 2019 constant dollars. Year 1 of the period of analysis, which would correlate with the effective date of the final rule, is used as the base year.
- The FAA uses a ten-year time period of analysis to capture the effects

[85] Source: 2017 Skylogic Research, a firm tracking the drone industry found 36% of the units sold in North America in the $500 to $1000 range are manufactured by DJI (*https://www.vox.com/2017/4/14/14690576/drone-market-share-growth-charts-dji-forecast*). For purposes of this analysis, the 36 percent is used as a proxy for the share of DJI units in the U.S. fleet.

[86] The FAA made the following calculations to estimate the portion of the modeler fleet that are DJI: (i) Multiplied the year 1 combined UAS sales forecast developed for the proposed rule by 36 percent to estimate the number of DJI units sold for recreational and part 107 purposes during year 1; (ii) Multiplied the year 1 part 107 sales forecast by 71% to estimate portion of part 107 sales that were DJI; and, (iii) Subtracted ''b'' from ''a'' to estimate year 1 recreational sales of DJI units. Based on these calculations, DJI recreational units sold in year 1 accounted for about 20% of the recreational units sold in year 1.

[87] Persons operating UAS without remote identification equipment would always be required to operate within visual line of sight and within an FAA-recognized identification area. Persons operating UAS without remote identification equipment would need to travel and incur costs of operating within an FAA-recognized identification area.

of the proposed compliance period and recurring effects of the proposed rule.[88]

• The analysis includes the proposed two-year phase-in period for compliance by persons responsible for the production of UAS from the effective date of the rule. Operators have one additional year beyond this compliance date to comply with the provisions of the final rule.

• The FAA uses a three percent and seven percent discount rate to quantify present value costs and cost savings as prescribed by OMB in Circular A–4.[89]

C. Affected UAS Fleet/Characteristics

• The analysis of costs and cost savings of this proposed rule are based on the fleet forecast for small unmanned aircraft as published in the FAA Aerospace Forecast 2019–2039.[90] The forecast includes base, low, and high scenarios. The analysis provides a range of net impacts from low to high based on these forecast scenarios. The FAA considers the primary estimate of net impacts of the proposed rule to be the base scenario.

• Based on the FAA fleet forecast for small unmanned aircraft, the FAA estimates the average number of aircraft owned by each part 107 operator to be 2.4 and the average number owned by each recreational flyer to be 1.4 aircraft. The FAA assumes the average lifespan for unmanned aircraft operated by these two groups is three years based on FAA research related to the its annual aerospace forecast, UAS registration information, information from recreational and model unmanned aircraft owners, and a review of literature.[91]

• The FAA assumes members of a nationwide community based organization own, on average, two aircraft,[92] which may have an average lifespan that exceeds ten years. As a result, members of a nationwide community-based organization may not incur the same pattern of maintenance and replacement costs as other recreational flyers.[93]

D. Producers (Manufacturers)

• Based on the FAA part 48 unmanned aircraft registry, the FAA estimates that 83 percent of small unmanned aircraft sold in the United States are produced by foreign entities.

• Each UAS producer will incur an estimated one-time cost of $313 for the purchase of a remote identification standard from a consensus standards body.[94]

• The FAA estimates that potentially as many as 157 U.S. and 324 foreign producers would submit a declaration of compliance for 313 U.S. and 787 foreign models of UAS for FAA acceptance by year 1 or 2 of the analysis period depending on their ability to retrofit.[95] During each of the remaining years of the analysis period, the FAA assumes an additional nine new producers would submit a declaration of compliance annually for one model of unmanned aircraft each, and nine new models will be produced by preexisting producers, for a total of eighteen new models of UAS annually.[96]

• The FAA assumes that five percent of the declarations of compliance submitted by persons responsible for the production of standard remote identification UAS and limited remote identification UAS to the FAA would not be accepted. The declaration of compliance would then be rewritten and resubmitted to the FAA for acceptance, and the FAA would accept the resubmission.

• Producers will maintain product support and notification procedures to notify the public and the FAA of any defect or condition that causes the UAS to no longer meet the requirements of proposed part 89.

E. Remote ID USS

• The FAA estimates that ten entities will request to become Remote ID USS and nine of the entities will be approved by the FAA by the end of year 1 in the analysis period. For each of the nine remaining years of the analysis period, the FAA assumes one additional entity will request to become a Remote ID USS annually which will then be approved by the FAA.[97]

• Each Remote ID USS applicant will be required to submit an application package to the FAA requesting to become an FAA-qualified Remote ID USS. The FAA determines that each application package submitted will not exceed 40 pages[98] and will take the applicant 25 hours per page to complete at a fully burdened wage of $92.72 per hour (a fully burdened wage includes pay and benefits).[99]

[88] The FAA typically uses a five-year time period for Regulatory Impact Analysis of UAS rulemakings to align with historical and current FAA UAS Forecasts (see *https://www.faa.gov/data_research/aviation/aerospace_forecasts/media/Unmanned_Aircraft_Systems.pdf*). In addition, the FAA acknowledges uncertainty in estimating incremental impacts of this proposed rule beyond five years due to rapid changes in UAS technology and innovation.

[89] OMB Circular A–4, *Regulatory Analysis* (2003), *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf.*

[90] FAA Aerospace Forecast Fiscal Years 2019–2039 at 30–33, *available at http://www.faa.gov/data_research/aviation/aerospace_forecasts/media/FY2019–39_FAA_Aerospace_Forecast.pdf*

[91] A review of articles and papers further supports an average three-year lifespan for a small UAS. The review found life expectancy is influenced by many factors, such as flight conditions, frequency of use, and quality of maintenance. Lifespan is also affected by rapid advances in technology, which can result in ''planned obsolescence'' of older UAS models due to manufacturers advancing new capabilities that drive consumer satisfaction and demand at additional costs. UAS lifespan is expected to last similar to other consumer electronics within the same price range. In the United States, smart phones are replaced after 32 months, on average, while laptops have an average lifespan of 2–4 years (see the 2018 NPD Mobile Connectivity Report; *https://www.npd.com/wps/portal/npd/us/news/press-releases/2018/the-average-upgrade-cycle-of-a-smartphone-in-the-u-s--is-32-months---according-to-npd-connected-intelligence/*). Other information published by the European Union Aviation Safety Agency (''EASA''; *https://www.easa.europa.eu/sites/default/files/dfu/GTF%20-%20Report_Issue2.pdf#page=93&zoom=100,0,13.* p.47), the Civil Aviation Authority of Israel (*https://en.globes.co.il/en/article-proposals-drawn-up-for-regulating-drones-in-israel-1001270656*), and academia (see for example, *http://eng.fau.edu/research/fmri/pdf/Y1R1-17_Final_figliozzi.pdf,* p. 34), suggests the range is probably one year to three years, with EASA suggesting a span of one to four years.

[92] The FAA has heard that the Academy of Model Aeronautics (AMA) has a membership of about 200,000 and each member has nine aircraft on average. This would equate to a 1,800,000 AMA Fleet. The FAA plans to reach out to the AMA to confirm the average number of unique aircraft owned by its members (*i.e.,* an estimate adjusted for double-counting of shared aircraft that includes operational aircraft weighing more than 0.55 pounds)

[93] Based on research of ownership trends and discussions with UAS enthusiasts, the FAA assumes that CBO members spend more money to purchase or build their model aircraft and to maintain their aircraft such that the aircraft last much longer than that of the ''average'' recreational flyer. Additionally, members of CBOs are expected to own more model aircraft, on average, compared to other recreational flyers.

[94] *https://my.rtca.org/nc__store?category=a0L36000003g7jDEAQ.* Accessed November 13, 2018. Average price for the 11 unmanned aircraft standards available at the RTCA website. The 11 standards range in price from $140 to $675 for an average of $313.

[95] Based on analysis of the Association for Unmanned Vehicle Systems International (AUVSI) Unmanned Systems & Robotics Database.

[96] Based on analysis of the Association for Unmanned Vehicle Systems International (AUVSI) Unmanned Systems & Robotics Database.

[97] Source: FAA subject matter expert.

[98] See Section 6.5 Application Package Specifics, page 8. (Source: *https://www.faa.gov/uas/programs_partnerships/data_exchange/laanc_for_industry/media/FAA_USS_LAANC_Onboarding_Process.pdf.*) The FAA determines that the Remote ID USS applicant package will be more complex than the application package for LAANC.

[99] Based on information from the regulatory analysis of the 2019 proposed rule, Operations of Small Unmanned Aircraft Systems Over People (*https://www.regulations.gov/docket?D=FAA-2018-1087*). The regulatory analysis estimated it would take a small UAS manufacturer 25 hours per page of representative activity to compile information, draft, review, and approve remote pilot operating instructions. This estimate is used as a proxy for the time required by a USS service provider applicant to complete each page of the application package submitted to the FAA.

• The FAA assumes each entity operating a UAS would be required to subscribe to a Remote ID USS at a rate of $2.50 per month or $30 per year.[100] Entities that operate UAS without remote identification may only operate within FAA-recognized identification areas and are not required to subscribe to a Remote ID USS.

F. Other

• The FAA assigns the United States Department of Transportation guidance on the hourly value of travel time savings for personal purposes (for limited recreational flyers only). This value is equal to $14.21 per hour and is applicable for the ten-year analysis period.[101]

• The FAA assumes that all Academy of Model Aeronautics (AMA) flying sites will submit requests to become FAA-recognized identification areas, and that 90 percent of the requests will be approved. The remaining ten percent are assumed to be in sensitive areas and therefore will not be approved to become an FAA-recognized identification area.

• The FAA estimates it will conduct 2,002 investigations of UAS incidents annually for each year of the analysis period and that each investigation will range between 1 and 40 hours.[102]

The FAA requests comments, with supporting documentation, on these assumptions.

2. Benefits Summary

The FAA is proposing to require the remote identification of UAS operating in the airspace of the United States. Remote identification of UAS provides situational awareness of operations conducted in the airspace of the United States, fosters accountability of the operators and owners of UAS, and improves the capabilities of the FAA and law enforcement to investigate and mitigate careless, hazardous, and noncompliant operations. The ability to know the location of UAS operating in the airspace of the United States, and to identify and locate their operators, creates a safer environment. This, in turn, enhances safety in air commerce and the efficient use of the airspace of the United States.

First and foremost, the implementation of these proposed remote identification requirements would allow the FAA, as well as law enforcement entities, to have access to new information to help them be better able to perform their responsibilities in protecting users of the airspace as well as people and property on the ground. Remote identification of UAS would enable the FAA, national security agencies, and law enforcement entities to have near real-time awareness of UAS users in the airspace of the United States. This information could be used to distinguish compliant operators from those potentially posing a safety or security risk.

There has been an increase in UAS sightings near airports, some of which have caused travel disruptions and significant financial costs.[103] While remote identification alone will not stop such occurrences, the FAA expects the duration of the event can be reduced by the remote identification capabilities in this proposed rule.[104] London's Gatwick Airport was closed due to unmanned aircraft sightings in July 2017 and again in December 2018. In July 2017, a spokesperson for the airport reported that operations were suspended twice in one day, for a period of nine minutes, and again for a period of five minutes. In the December 2018 incident, Gatwick was closed twice during the holiday travel rush, once for almost 36 hours as police worked to identify those operating unmanned aircraft in the area.[105] The December closures affected approximately 150,000 passengers and resulted in approximately 1,000 flight cancellations,[106] which cost the airlines and the airport approximately $64.5 million[107] and $20 million, respectively.[108] Flights at London Heathrow Airport were suspended in January 2019 after a sighting of an unmanned aircraft.[109] The suspension of flights lasted approximately one hour.

The Dubai International Airport experienced closures due to unauthorized unmanned aircraft activity in 2015, 2016, and 2019.[110] In 2015, the unauthorized activity caused the airport to shut down for 55 minutes. In 2016, unauthorized UAS activity closed the airport three more times. Two of the closures lasted 30 minutes each, and one closure lasted for 115 minutes. Estimated losses for the three closures that occurred in 2016 totaled $16.6 million.[111] During the airport's most recent closure (February 2019), flight departures were suspended for 32 minutes. According to the Emirates Authority for Standardization and Metrology, airports in the United Arab Emirates suffer financial losses averaging $95,368 per minute due to unauthorized UAS activity.

In the United States, New Jersey's Newark Liberty International Airport experienced a closure in January 2019 after receiving two separate reports of a UAS sighting. The FAA reported that 43 flights were required to hold while nine flights were diverted during the event that lasted for 21 minutes.[112] On February 21, 2019, flights at Dublin Airport in Ireland were delayed for 30 minutes due to unauthorized unmanned aircraft activity, and on March 22, Frankfurt International Airport

[100] FAA review of subscription costs to USS for LAANC range from 0$ to $5 per month. The average of $2.50 is used for the regulatory analysis. In this analysis, the FAA assumes the subscription cost will be a flat rate and will not vary by the number of UAS operated by an entity. UAS service providers may charge additional fees for other services not related to this proposed rule.

[101] Time savings is estimated to be median hourly wage plus benefits as described in the U.S. Department of Transportation Revised Departmental Guidance on Valuation of Travel Time in Economic Analysis (Sept. 27, 2016).

[102] The FAA conducted 2,002 investigations in FY 2018.

[103] The FAA has been compiling a database of UAS sightings since November 2014. The database is compiled mostly from reports by pilots submitting statements of possible UAS sightings or encounters to the FAA's air traffic control facilities, but it also contains reports submitted by the general public, law enforcement, air traffic controllers, and others. The reports typically involve sightings of UAS operating around airports or airborne manned aircraft. The FAA analyzed 7,285 records from the database for the 48-month period starting with January 2015 and going through December 2108. During this time, UAS sightings have increased almost two fold, going from about 100 reports per month to just under 200 reports per month. The FAA acknowledges that the data is often not sufficient for the FAA to conduct investigations, and that reported sightings could involve UAS operating in a safe and authorized manner. However, the increase in reported sightings is indicative of a proliferation of UAS operating in the airspace.

[104] *http://www.digitaljournal.com/tech-and-science/technology/q-a-recent-airport-shutdowns-need-drone-interdiction-technology/article/543680.* Accessed February 26, 2019.

[105] *https://www.theguardian.com/uk-news/2018/dec/21/gatwick-airport-reopens-limited-number-of-flights-drone-disruption.* Accessed February 26, 2019.

[106] *https://www.independent.co.uk/travel/news-and-advice/gatwick-drones-arrests-flight-delay-cancelled-airport-christmas-travel-latest-update-a8695846.html.* Accessed February 26, 2019.

[107] *http://fortune.com/2019/01/22/gatwick-drone-closure-cost/.* Accessed February 26, 2019. Extrapolated from EasyJet's announcement that it lost $19.3 million in revenue and customer welfare costs during the shutdown. EasyJet reported 400 flight cancellations, and that the incident affected 82,000 of their passengers, for whom it paid an average of $160.90. Accessed February 26, 2019.

[108] *https://www.independent.co.uk/travel/news-and-advice/gatwick-drone-airport-cost-easyjet-runway-security-passenger-cancellation-a8739841.html.* Accessed February 26, 2019.

[109] *https://www.thenational.ae/world/europe/flights-briefly-stopped-at-heathrow-airport-over-drone-sighting-1.810964.* Accessed February 26, 2019.

[110] *http://www.digitaljournal.com/tech-and-science/technology/q-a-recent-airport-shutdowns-need-drone-interdiction-technology/article/543680.*

[111] *https://www.arabianbusiness.com/content/375851-drone-costs-100000-minute-loss-to-uae-airports.*

[112] *https://www.reuters.com/article/us-usa-drones/faa-details-impact-of-drone-sightings-on-newark-airport-idUSKCN1PH243.* Accessed February 26, 2019.

suspended operations for 29 minutes after an unmanned aircraft was spotted in the area.[113] [114] Frankfurt International Airport was closed again on May 9 for a period of 28 minutes due to a UAS sighting. The May 9 closure resulted in the cancellation of 143 departures with an additional 48 arrivals diverted to other airports.[115]

Currently, personnel that conduct law enforcement and compliance activities lack the ability to have near real-time awareness of UAS users in the airspace of the United States. These challenges are an impediment to the FAA's mission of ensuring the safety of the airspace of the United States. For example, over 200 unmanned aircraft were detected in the no-fly-zone of the 2018 Albuquerque International Balloon Fiesta in spite of the FAA prohibition.[116] This proposed rule could have aided the FAA to identify the operators of these unmanned aircraft.

The FAA believes this proposed rule is crucial for the development of UTM, which would enhance the safety and efficiency of the airspace of the United States. The FAA is collaborating with other government agencies and industry stakeholders to develop UTM, which would be separate from, but complementary to, the ATM system. As of mid-December 2018, there were 1.27 million unmanned aircraft in the unmanned aircraft registry. This is over five times greater than the number of active manned aircraft registered with the FAA. While ADS–B is currently used to track manned aircraft and is mandated for manned aircraft in certain airspace after January 1, 2020, it was not designed to incorporate millions of unmanned aircraft on the same network. Instead, the FAA envisions a community-based traffic management system, where UAS operators have the responsibility to participate in a safe operating environment. This vision for UTM includes services for flight planning, communications, separation, and weather, among others.

The FAA also believes remote identification would provide greater situational awareness of UAS operating in the airspace of the United States to other aircraft in the vicinity of those operations, and provide information to airport operators. Manned aircraft, especially those operating at low altitudes where UAS operations are anticipated to be the most prevalent, such as helicopters and agricultural aircraft, could carry the necessary equipment to display the location of UAS operating nearby. In addition, we expect towered airports will use remote identification information for situational awareness, especially for landing and takeoff operations. Further, an aircraft preparing to take off from a non-towered airport in Class G airspace may have access to greater information than is currently available.

Remote identification is a key stepping stone to facilitating the ability to conduct BVLOS operations. While the FAA acknowledges remote identification of UAS does not, in and of itself, permit BVLOS operations, without remote identification of UAS, BVLOS operations on a large scale are not feasible. BVLOS operations are expected to replace riskier manned activities and to also create new economic opportunities. When UAS are transmitting and broadcasting, as appropriate, remote identification information, they are contributing to a cooperative operating environment which supports detect-and-avoid and aircraft-to-aircraft communication systems that could aid in unmanned aircraft collision avoidance. Remote identification would help enable these operations to occur on a routine basis, rather than through the waiver process.

BVLOS operations enable entities to conduct activity which may otherwise be too expensive, too dangerous, or too impractical to carry out.[117] For example, BVLOS operations allow unmanned aircraft to collect data at costs less than those incurred using the more traditional methods of manned aircraft or satellites.[118] Cost savings from the use of unmanned aircraft for BVLOS operations is validated in a Precision Hawk case study. In this study, the costs of power line inspections using unmanned aircraft versus a manned helicopter were compared.[119] In the electric utilities industry, high tension power lines must be inspected on a regular basis, and these inspections are typically performed with manned helicopters. While requirements and methodologies vary, helicopter inspection costs could range from $40 to $700 per mile.[120] Conversely, utility companies operating UAS BVLOS could spend $10 to $25 per mile of inspection. Based on these costs, the Precision Hawk Study estimates a potential savings of approximately $9 million over a five-year period for a company that must inspect 10,000 miles of power lines per year.[121]

UAS remote identification and BVLOS operations would enable entities to conduct dangerous activities with unmanned aircraft. While UAS remote identification itself does not prevent accidents, accidents involving unmanned aircraft typically have a much lower threat to human life than do accidents involving manned aircraft. One example of an accident where injury could possibly have been prevented if a UAS was substituted for a manned aircraft was for a power line inspection near BWI Marshall Airport, MD Amtrak Rail Station. The helicopter used to perform the inspection crashed, resulting in injuries to the helicopter's three occupants, and subsequently started a brush fire that resulted in a service interruption for Amtrak passengers travelling between Washington, DC,[122] and Baltimore, Maryland. In May of 2018, a helicopter performing a routine transmission line inspection crashed in Louisiana when its landing gear became entangled in transmission lines. Of the three people on board the helicopter, one was killed, and the other two were injured.[123] This loss of life could possibly have been prevented if the inspection had been conducted with a UAS instead of a manned helicopter. In addition to replacing manned aircraft for utility inspections, UAS can also eliminate the need for workers to climb to dangerous heights for inspection of power lines, cellular towers, and wind turbines.[124]

This proposed rule would assist government efforts to address illegal activity and protect national security. Criminal operations create a direct threat to national security and public safety and also pose severe hazards to safety in air commerce. Such risks are multiplied with the increasing sophistication of technology, the availability of UAS equipment, and the enabling of additional types of

[113] *https://dronelife.com/2019/02/22/flights-were-grounded-at-dublin-airport-after-another-drone-sighting/.* Accessed February 26, 2019.

[114] *https://www.ecnmag.com/news/2019/03/drone-sightings-interrupt-germanys-frankfurt-airport.*

[115] *https://www.france24.com/en/20190509-drone-sighting-briefly-grounds-flights-frankfurt-airport.*

[116] *https://www.krqe.com/news/balloon-fiesta/hundreds-violate-faa-s-no-drone-fly-zone-at-balloon-fiesta/1510662538.* Accessed December 18, 2018.

[117] *https://www.precisionhawk.com/beyond-visual-line-of-sight-bvlos-drone-operations/.* Accessed December 19, 2018.

[118] Ibid.

[119] Ibid.

[120] Ibid.

[121] Ibid.

[122] *https://baltimore.cbslocal.com/2016/04/16/helicopter-crash-reported-near-bwi-airport/.* Accessed December 19, 2018.

[123] *https://www.nola.com/traffic/index.ssf/2018/05/victims_in_fatal_boutte_helico.html.*

[124] *https://www.powermag.com/using-drones-to-increase-net-safety-in-the-utility-sector/?pagenum=1.* There are approximately 52,000 utility-scale wind turbines in the United States.

operations across the airspace of the United States. The FAA recognizes the increasing availability and potential use of UAS for illegal activities such as the carrying and smuggling of controlled substances, illicit drugs, and other payloads; the unlawful invasion of privacy; illegal surveillance and reconnaissance; the weaponization of UAS; sabotaging of critical infrastructure; property theft; disruption; and harassment. With this proposed rule, the FAA, first responders, and law enforcement officers would be able to more easily determine who is operating in the airspace and assist in identifying anomalies or dubious operations to determine whether action is warranted to ensure the safety and security of the airspace of the United States and the people on the ground.

Safety and security enforcement can be extremely difficult absent a remote identification requirement that enables the prompt and accurate identification of UAS and their operators. Recently, there have been several instances of unmanned aircraft operating illegally in the areas of wildfires where the FAA typically implements temporary flight restrictions to support U.S. Forest Service activities. Aerial firefighting aircraft typically fly in smoky, windy, turbulent conditions, and unauthorized unmanned aircraft flights near a wildfire could cause injury or death to firefighters and pilots because firefighting aircraft typically fly at very low altitudes, which creates an environment for mid-air collisions.[125] If unmanned aircraft are detected in an unauthorized area, firefighting aircraft could be grounded. The effects of lost aircraft flying time can be compounded by flames moving into untreated terrain, potentially threatening lives and property.[126]

The U.S. Department of Interior tracks private unauthorized unmanned aircraft incursions over wildland fires. In their first year of reporting (2014), there were two incursions of unauthorized unmanned aircraft over wildland fires. In 2015, the number of unauthorized unmanned aircraft incursions increased six-fold from the prior year to total 12 incursions.[127] By 2016, there were 42 unauthorized unmanned aircraft incursions over wildland fires.[128] Of these 42 incursions, 12 resulted in delays of aerial support to firefighters, and several incursions resulted in fire suppression aviators taking evasive action to avoid collisions with unmanned aircraft. During 2017, aerial wildland firefighting efforts ceased 25 times due to unauthorized unmanned aircraft incursions.[129] The most recent report published by the U.S. Department of Interior (August of 2018) shows that firefighting efforts were impacted 15 times due to unauthorized unmanned aircraft incursions over wildland fires.[130]

Delaying firefighting missions creates significant costs and can also delay transportation of firefighters to different locations.[131] During the Lake Fire in California's San Bernardino County in 2015, three planes carrying flame retardant were prevented from dropping their cargo due to interference from a private unmanned aircraft operating in the vicinity and contrary to rules.[132] One aircraft was able to drop its retardant on a different fire, but the other two aircraft had to jettison retardant because they would not be able to land otherwise due to aircraft weight. Officials stated that the failed mission cost between $10,000 and $15,000.

Similarly, a State senator from Utah stated that costs for fighting a fire 300 miles south of Salt Lake City would have been lower instead of actual costs of over $10 million if five unmanned aircraft flights had not interfered with firefighting efforts.[133] Likewise, in the Pinal Fire (Arizona) that occurred during May of 2017, at least four separate incidents involving unauthorized unmanned aircraft hindered firefighting operations.[134] Each of the four incidents involved recreational users. In one of the incidents, an air tanker flying over the fire was forced to release its retardant at a higher altitude for safety reasons, which reduced the retardant's effectiveness for smothering fire. Likewise, unmanned aircraft disrupting fire-fighting efforts at the Lightner Creek Fire (Colorado) in 2017 resulted in two air tankers jettisoning 1,600 gallons of retardant at a cost of approximately $8,000 to $10,000.[135] Lastly, during the Pole Creek Fire (Utah) during October of 2018, all firefighting aircraft in the area were grounded, as well as three helicopters that had been supporting ground crews, due to unmanned aircraft flying in airspace with a temporary flight restriction.[136]

In addition to the remote ID requirements of this proposed rule, this rulemaking proposes that recreational flyers have a single Certificate of Aircraft Registration for each unmanned aircraft operated. Currently, the FAA does not have aircraft-specific data for aircraft operated by recreational flyers. This means that the FAA does not have a data set that includes the serial numbers of all unmanned aircraft registered under part 48, and thus cannot correlate the registration data to the remote identification data which would be transmitted and broadcast, as appropriate, by unmanned aircraft under the proposed rule. Similarly, the FAA is proposing to allow a person to operate foreign-registered civil unmanned aircraft in the United States only if the person submits a notice of identification to the Administrator. These registration and notification requirements are the foundation for both identifying aircraft and for promoting accountability and the safe and efficient use of the airspace of the United States. The lack of aircraft-specific data inhibits the FAA and law enforcement agencies from correlating the remote identification data proposed in this rule with operators of unmanned aircraft.

Conclusion

The FAA expects this proposed rule will result in several important benefits and enhancements to support the safe integration of expanded UAS operations in the airspace of the United States. The proposal would provide situational awareness of UAS operations to other aircraft and airport operators. The proposed rule would provide information to distinguish compliant UAS users from those potentially posing a safety or security risk. The followingtable summarizes the benefits of the proposed rule.

[125] *https://www.usda.gov/media/blog/2016/08/10/unauthorized-drones-near-wildfire-can-cost-and-kill.* Accessed December 21, 2018.

[126] *https://www.usda.gov/media/blog/2016/08/10/unauthorized-drones-near-wildfire-can-cost-and-kill.* Accessed December 21, 2018.

[127] *https://www.doi.gov/pressreleases/interior-expands-information-sharing-initiative-prevent-drone-incursions.*

[128] Ibid.

[129] *https://www.firehouse.com/tech-comm/drones/article/12396869/the-lovehate-relationship-between-drones-wildland-firefighters.* Accessed December 18, 2018.

[130] *https://www.doi.gov/sites/doi.gov/files/uploads/2018_wildland_fire_incursion_events_of_unauthorized_uas.pdf.*

[131] *https://www.doi.gov/sites/doi.gov/files/uploads/2018_wildland_fire_incursion_events_of_unauthorized_uas.pdf.*

[132] *https://arstechnica.com/tech-policy/2015/06/drone-flying-over-forest-fire-diverts-planes-costs-us-forest-service-10k/.* Accessed December 21, 2018.

[133] *https://apnews.com/0e8053dc251f4efbacbd249f3aa8573c.* Accessed December 21, 2018.

[134] *https://wildfiretoday.com/2017/05/26/drones-interfere-with-aviation-operations-on-pinal-fire/.*

[135] *https://durangoherald.com/articles/169962*

[136] *https://universe.byu.edu/2018/09/21/firefighters-make-headway-fighting-pole-creek-bald-mountain-fires-1/*

[137] ''Because these operations have a potential impact on public safety and national security, the FAA does not intend to promulgate a final rule to

TABLE 6—SUMMARY OF BENEFITS OF PROPOSED RULE

Safety and Security	• Provides situational awareness of UAS flying in the airspace of the United States to other aircraft in the vicinity of those operations and airport operators. • Provides information to distinguish compliant UAS users from those potentially posing a safety or security risk. • Enables the FAA, national security agencies, and law enforcement entities to obtain situational awareness of UAS in the airspace of the United States in near real-time. • Provides additional registration and notification requirements for identifying aircraft and promoting accountability and the safe and efficient use of the airspace of the United States.
Enables Expanded Operations and UAS Integration.	• Assists in the implementation of operations of small UAS over people and at night. A final rule for operation of small UAS over people and at night is contingent upon a final action for UAS with remote identification being effective.[137] • Provides UAS-specific data to facilitate future, more advanced operational capabilities, such as detect-and-avoid and aircraft-to-aircraft communications that support beyond visual line of sight (BVLOS) operations. • Provides UAS-specific data contributing to a comprehensive UAS traffic management (UTM) system that would facilitate the safe expansion of operations.

In addition, the proposed rule provides flexibility through minimum performance requirements that would accommodate future innovation and improve the efficiency of UAS operations. The proposal also does not preclude early compliance for producers or operators to realize earlier expanded operations and commercial opportunities.

3. Cost and Savings Summary

UAS owners, operators, and producers, as well as Remote ID USS and developers of remote identification means of compliance, would play important roles in the remote identification of UAS. The following subsections summarize costs and cost savings by affected groups within the scope of the proposed rule.

i. UAS Owners and Operators

Registration Provisions

The FAA is proposing to require the owners of UAS to register under part 47 or part 48 and to provide the serial number of the unmanned aircraft, unless the aircraft is specifically excepted from registration. If an unmanned aircraft is currently registered, its owner would be required to update the aircraft's registration to include the serial number by the compliance date of the final rule or the first registration renewal after a rule becomes effective, whichever is earlier.

Part 48 currently requires that registration of aircraft operated under part 107 include the make, model, and serial number, if available, of the aircraft as part of the aircraft registration. Since regulations require these registrations to be renewed every three years, and the compliance date for the requirement to include the make, model, and serial number is 36 months after the effective date of the final rule, some owners of registered aircraft operated under part 107 would not incur additional costs. Likewise, unmanned aircraft registering under part 47 are currently required to include make, model, and serial number, so some owners of these aircraft would not incur additional costs as well.

However, a portion of the part 107 fleet will be replaced early as a result of the proposed one-year operational compliance period, which will trigger the requirement to register the new aircraft at a time earlier than would otherwise have been. The 10-year present value incremental cost incurred for registering new aircraft is about $0.03 million at a three percent discount rate and $0.02 million at a seven percent discount rate. The incremental annualized costs are about $0.003 million at either a three percent or seven percent discount rate.

The FAA also proposes to revise the registration requirements in part 48 to remove the provisions that allow small unmanned aircraft to register as model aircraft under a single Certificate of Aircraft Registration and to require the individual registration of each aircraft, regardless of its intended use.[138] This means that every small unmanned aircraft registered under part 48 would need to have its own Certificate of Aircraft Registration.

The FAA estimates additional costs for recreational flyers to amend the part 48 aircraft registry to register each unmanned aircraft owned and update each individual registration to include make, model, and serial number. The FAA estimates the 10-year present value costs to affected recreational flyers is about $1.1 million at a three percent discount rate and about $0.89 million at a seven percent discount rate. The incremental annualized costs are about $0.13 million at either a three percent or seven percent discount rate.

Recreational flyers will also be required to pay a $5 registration fee to the FAA for each additional aircraft registered. Government fees and taxes are considered transfer payments per OMB Circular A–4 and are not considered a societal cost. These transfers are reported separately from the costs of this proposed rule.[139] Over the 10-year period of analysis, the present value of incremental fees paid by recreational flyers for registration of additional aircraft totals $8.1 million at a three percent discount rate and $6.6 million at a seven percent discount rate. The annualized fees are about $1 million at either a three percent or seven percent discount rate.

Effects of Retrofits and One Year Operational Compliance

The proposed rule would require persons responsible for the production of standard remote identification UAS or limited remote identification UAS to provide UAS with remote identification two years after the effective date of the final rule. Operators of UAS would have

allow these operations until a regulation finalizes the requirements regarding remote identification of small UAS.'' Safe and Secure Operations of Small Unmanned Aircraft Systems, Advance Notice of Proposed Rulemaking, February 13, 2019 (84 FR 3732).

[138] This proposal uses the term ''limited recreational operations'' when discussing registration requirements under part 48. Part 48 uses the term ''model aircraft'' to describe recreational UAS operations. The FAA considers that model aircraft under part 48 are consistent with the ''limited recreational operations'' described in 49 U.S.C. 44809, therefore ''limited recreational operations'' has been used throughout to ensure consistency of terminology with current statutory requirements.

[139] See the ''Separate Reporting of Transfers'' per OMB Circular A–4 (*https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf*).

one additional year beyond the production compliance date to begin using UAS with remote identification.[140] The exception is for operators of UAS without remote identification. The FAA determined this affected group could fly UAS without remote identification at FAA-recognized identification areas. Under the proposed construct, any person (*e.g.,* a limited recreational flyer) who flies exclusively at FAA-recognized identification areas could use a UAS without remote identification.

As previously discussed in the ''Key Assumptions and Data Sources'' section, during the development of this rulemaking the FAA received information from industry suggesting part of the existing fleet of UAS can be retrofit to comply with remote identification requirements (*e.g.,* by a software update or ''push'' through the internet) and this could be achieved within the first year after the effective date of the final rule given the availability of FAA-accepted means of compliance. The FAA estimates at least 93% of the current part 107 fleet and at least 20% of the current recreational fleet would be eligible for retrofits. Besides reducing costs, retrofits would enable early compliance with remote identification for persons operating a portion of the existing UAS fleet and those UAS purchased during the proposal's 24-month period before compliance with proposed production requirements. For example, retrofits of UAS purchased in year 1 of the analysis period would enable them to be operated for their entire lifespan (*i.e.,* one year after the three year full compliance date of the proposal).[141]

Therefore, the group of retrofit UAS used in this analysis are based on the following assumptions: (1) These UAS are purchased during year 1 of the analysis period and have a lifespan of three years; (2) the producers of these UAS have identified an FAA-accepted means of compliance for remote identification that can be used for retrofits during year 1 of the analysis period; and, (3) these UAS are capable of being retrofit with relative ease, little downtime from operations, and at minimal costs for at least 93% of the UAS in the part 107 fleet and at least 20% of the UAS in the recreational fleet purchased in year 1. Without the availability of retrofits, UAS purchased during year 1 would not be equipped with Remote Id and therefore grounded in year 4.

As a result of the proposed compliance period for UAS operators and the potential for retrofits, a portion of about 7% of the UAS in the part 107 fleet and 80% of the UAS in the recreational fleet *purchased* in year 1 of the analysis would not be compliant with the proposal in year 4 of the analysis (after the full compliance date) and would effectively become obsolete prior to the end of useful life.[142] The FAA uses a straight line depreciation method to estimate a measure of expense or cost to part 107 operators and recreational flyers for early replacement of UAS as a result of the proposed compliance period.[143] In the case of the part 107 operators, this measure of depreciation represents the cost to entities for an early outlay of funds for replacing UAS with remaining useful life.[144] For the recreational flyers, the estimate is used as a proxy for the opportunity cost for loss of use of UAS with remaining useful life.

The estimated straight-line depreciation is based on average UAS purchase prices of $2,500 for the part 107 consumer fleet and about $114 for the fleet of UAS flown by recreational flyers. For each of these categories, the purchase price is spread equally across 36 months to estimate the monthly depreciation expense (36 months is the lifespan of a small UAS).[145] [146] The early depreciation expense is only applicable to the portion of the UAS fleet purchased in year 1 of the analysis period, as this group of UAS will be grounded due to the proposed rule's requirement that all UAS have remote identification by the end of year 3 of the analysis period. Therefore, some of the UAS purchased in year 1 will lose up to one year of useful life (and correspondingly up to one year of depreciation expense).[147] The following table presents loss of use quantified as depreciation loss for year 4.[148]

TABLE 7—COST IMPACT OF PROPOSED OPERATIONAL COMPLIANCE PERIOD, LOSS OF USE QUANTIFIED AS DEPRECIATION EXPENSE

[$ millions]

Affected UAS fleet	Number of UAS sold in year 1	Depreciation expense (units sold in year 1)*
Pt 107—Consumer	12,489	*$4.8

[140] After the proposed full compliance date of 36-months past the effective date of the final rule, UAS without remote identification that weigh more than 0.55 pounds may only be operated at FAA-recognized identification areas.

[141] This analysis uses an average three year lifespan for affected UAS (not including those UAS operated by members of community based organizations that fly exclusively within FAA-recognized identification areas, see the ''Key Assumptions and Data Sources'' section above). Based on the three year lifespan and the proposed 36-month full compliance period, affected UAS purchased in year 1 of the analysis period, or 12 months after the effective date of the final rule, would be effectively grounded in year 4 of the analysis unless retrofit.

[142] This equates to eighteen percent of the overall affected UAS fleet in year 4 would likely be replaced prior to the end of useful life. This excludes UAS that are flown by members of CBO, since the FAA assumes this affected group would fly UAS at FAA-recognized identification areas.

[143] The straight line depreciation method is a common default method of depreciation that is calculated by dividing the difference between an asset's cost and its expected salvage value by the number of years it is expected to be used (*https://corporatefinanceinstitute.com/resources/knowledge/accounting/straight-line-depreciation/* or *https://www.investopedia.com/terms/s/straightlinebasis.asp*).

[144] The FAA uses this depreciation analysis as a means to measure lost utility or useful life of UAS due to the proposed compliance period. However, these estimates may be offset through tax savings. Companies and other entities may use depreciation expenses to generate tax savings, which is a transfer effect that might reduce the impact on companies, but not reduce the social costs of the rule. U.S. tax rules allow depreciation expenses to be used as tax deductions against revenue in arriving at taxable income. The higher the depreciation expense, the lower the taxable income and the greater the tax savings.

[145] Page 47 of The FAA Aerospace Fleet Forecast FY 2019–2039 identifies cost for consumer UAS. The estimated average purchase price for UAS used by limited recreational operators is based on research of UAS used by hobbyists. The monthly depreciation expense for consumer UAS and limited recreational UAS is $69.44 and $3.16, respectively.

[146] Annual UAS sales are spread evenly over a 12-month period to estimate monthly sales.

[147] For ease of calculation, sales of UAS are presumed to occur on the first day of the month. Therefore, units sold in January of year 1 of the analysis period are fully depreciated by December of year 3 and thus there is no loss of useful life; units sold in February of year 1 lose one month of useful life (which is January of year 4); units sold in March of year 1 lose two months of useful life (which are Jan-Feb of Year 4); units sold in April of year 1 lose three months of useful life (which are Jan-Mar of year 4); etc.

[148] See the Regulatory Impact Analysis for this proposed rulemaking for the derivation of these estimates.

TABLE 7—COST IMPACT OF PROPOSED OPERATIONAL COMPLIANCE PERIOD, LOSS OF USE QUANTIFIED AS DEPRECIATION EXPENSE—Continued

[$ millions]

Affected UAS fleet	Number of UAS sold in year 1	Depreciation expense (units sold in year 1) *
Recreational	299,252	5.2
Undiscounted Total		10.0
3% PV		8.9
7% PV		7.6

Table notes: (i) Row and column totals may not sum due to rounding. (ii) Affected UAS will be depreciated for a period of one to eleven months, depending on the month of purchase.

The present value cost impact of the loss of UAS use for operators is $8.9 million at a three percent discount rate and $7.6 million at a seven percent discount rate. The annualized cost impact of loss of use is about $1 million at either a three percent or seven percent discount rate. If the estimated level of retrofits are possible, then this impact represents only about two percent of the total costs of the proposed rule. If fewer retrofits are possible, then costs related to the loss of UAS use for operators would increase proportional to the number of retrofits available by model and share of the model in the fleet.

The FAA believes this cost impact is justified in order to reduce the delay for law enforcement, security partners, the FAA, and airports to use remote ID information. The FAA considered allowing three years beyond the producer compliance date for owners and operators to comply with the remote identification requirements of this proposed rule in the ''Alternatives Considered'' section. This period of time coincides with the three-year lifespan of a small UAS and would have prevented costly grounding or replacement of UAS prior to the end of useful life. However, the FAA determined that the three-year compliance period was less preferable, because it prolonged safety and security risks to air traffic and airports by delaying the ability of law enforcement personnel to identify unauthorized UAS operations. To reduce the delay in implementing remote identification, the operational compliance period was reduced from three years to one year.

ii. Remote ID USS Subscription Fee

The FAA is proposing that three years following the effective date of a final rule, standard remote identification UAS and limited remote identification UAS would be required to transmit remote identification messages through the internet to a Remote ID USS. In addition, standard remote identification UAS would also be required to broadcast the same message elements directly from the unmanned aircraft. UAS that are unable to comply with the requirements for standard remote identification UAS or limited remote identification UAS would be required to operate exclusively within an FAA-recognized identification area.

The FAA does not intend to provide remote identification services to UAS operators, but instead would enter into MOAs with Remote ID USS in a manner similar to LAANC USS. The FAA anticipates that UAS operators would subscribe to a Remote ID USS and then connect to the internet using their existing internet service provider. Based on the LAANC USS business model,[149] the subscription to a Remote ID USS may range in cost from $0 to $5 per month, per operator, for a midpoint of $2.50 per month.[150] For purposes of this regulatory evaluation, the FAA determines that each operator of a standard remote identification UAS or limited remote identification UAS would be required to subscribe to a Remote ID USS at a fee of $2.50 per month.

Based on the compliance dates for this rulemaking, the FAA determines that an app to connect standard remote identification UAS and limited remote identification UAS to a Remote ID USS would be available at the start of year 2 of the analysis period. The number of new and renewed Remote ID USS subscriptions is approximately 3.1 million for part 107 operators and 5.7 million for recreational flyers. The present value cost of subscriptions to affected UAS operators totals $242 million at a three percent discount rate and $192 million at a seven percent discount rate. The annualized costs of the subscriptions is about $28 million at either a three percent or seven percent discount rate.

The FAA notes that the $2.50 subscription fee could be considered a transfer payment that is representative of the cost for Remote ID USS to provide remote identification services.

iii. UAS Producers

For each UAS designed and produced for operation in the United States, the producer (with limited exceptions included in the proposal) would be required to:

- Produce the UAS in accordance with the minimum performance requirements of the proposed rule using an FAA-accepted means of compliance;
- Issue each unmanned aircraft a serial number that complies with the ANSI/CTA–2063–A serial number standard;
- Label the unmanned aircraft to indicate that it is remote identification-compliant and indicate whether the UAS is a standard remote identification UAS or limited remote identification UAS; and,
- Submit a declaration of compliance for acceptance by the FAA, declaring that the UAS complies with the minimum performance requirements of the proposed rule.

As discussed in this preamble, the FAA would require persons responsible for the production of standard remote identification UAS and limited remote identification UAS to comply with the minimum performance requirements of the proposed rule using an FAA-accepted means of compliance and would require the person to issue serial numbers that comply with the ANSI/CTA–2063–A serial number standard. Presently, an FAA-accepted means of compliance for UAS remote identification does not exist, but the FAA is aware of UAS remote identification standards being developed. The FAA estimates the cost

[149] The selection process for LAANC providers is approximately 10 months. *https://www.faa.gov/news/updates/?newsId=93047&omniRss=news_updatesAoc&cid=101_N_U.*

[150] The cost of $0 to $5 is based on an internet search of LAANC USS providers. LAANC USS also provide services through apps, such as AirMap and Kittyhawk.

to each producer to obtain a copy of a standard that could be an FAA-accepted means of compliance for remote identification to be $313.[151] It is anticipated that a standard for means of compliance for remote identification may not be available until year 2 of the analysis period[152], and during this year, the FAA estimates 157 U.S. producers and 324 foreign producers would purchase the standard to be used as an FAA-accepted means of compliance.[153] For the remaining years of the analysis period, the FAA estimates three additional U.S. producers and six additional foreign producers would enter the market annually and would also incur the cost to purchase a means of compliance.

The proposed rule would require a person responsible for the production of standard remote identification UAS or limited remote identification UAS to label the UAS to show that it was produced with remote identification technology capable of meeting the proposed rule. The label must be in English and be legible, prominent, and permanently affixed to the unmanned aircraft. The proposed labeling requirement would assist the person manipulating the flight controls of the UAS to know that his or her UAS is eligible to conduct operations within the airspace of the United States. The proposed labeling requirement would also assist the FAA in its oversight role because it provides an efficient means for an inspector to determine whether a UAS meets the requirements of the proposed rule.

The FAA estimates that it would take twenty hours to design a label for each model of aircraft produced. The costs would begin in year 2 of the analysis period at which time the FAA estimates 313 U.S. models of aircraft and 787 models of foreign aircraft would require labeling.[154] For the remainder of the analysis period, an additional eighteen models of U.S. and foreign produced aircraft would require labeling design on an annual basis.

Over the 10-year period of analysis, the present value costs to producers for labeling is about $2.0 million at a three percent discount rate and $1.7 million at a seven percent discount rate.

The proposed rule would require the producers of UAS to submit a DOC to the FAA identifying the means of compliance used to determine that the UAS meets the applicable performance requirements. The FAA would rely on a producer's DOC to ensure that the make and model of UAS is compliant with the proposed requirements at the time of manufacture.

The FAA estimates that the test report and/or substantiating data for the DOC would average 50 pages and would take five hours per page to generate. The five hours consists of one hour for documenting results and four hours for performing tests that demonstrate compliance with the remote identification equipage requirements.[155] For this analysis, the FAA assumes that five percent of DOCs would not be accepted and have to be resubmitted, possibly with updated analysis, for acceptance. The FAA also assumes that after a producer rewrites and resubmits a DOC, the FAA would accept the revised DOC. The proposed rule requires manufacturers to retain a test report or any other substantiating data that supports their DOC.

In total, estimated costs over the ten-year period of analysis for producers to perform tests and generate substantiating data to support their DOC is approximately $25.2 million at a present value discount rate of three percent and $22.9 million at a present value discount rate of seven percent. Annualized costs at a three percent discount rate and a seven percent discount rate are approximately $3 million.

Any producer of a UAS with remote identification will be required to submit a one-page DOC form to the FAA to affirm that the UAS meets the performance requirements and was designed and produced using an FAA-accepted means of compliance for UAS with remote identification.[156] The time required to complete the form and submit it through an FAA web portal is estimated to be 15 minutes at a cost of $20.73 per model.[157] In addition to the 15 minutes for submitting the DOC form, there is an additional 19.75 hours expended by multiple levels of a producer's organization for the purpose of review and quality checking. The cost to submit a declaration of compliance occurs largely in year 2 of the analysis period so that UAS producers are able to manufacture inventory with remote identification for availability to operators beginning with year 3 of the analysis period. Producers would incur additional costs for submitting a declaration of compliance during years 3 through 10 of the proposed rule as they design new models of UAS. The FAA assumes that five percent of the submissions will not be accepted initially, but will then be resubmitted and accepted by the FAA.

Over the 10-year period of analysis, the present value costs to producers for submitting the declaration of compliance form is about $27.2 million at a three percent discount rate or $24.8 million at a seven percent discount rate for annualized costs of approximately $3.5 million and 3.2 million, respectively.

Beginning in year 3 of the analysis period, producers would be required to provide UAS with remote identification.[158] Standard remote identification UAS would be required to transmit message elements through the internet to a Remote ID USS and to broadcast the same message elements directly from the unmanned aircraft. Limited remote identification UAS would be required to be designed and produced such that the aircraft can operate no more than 400 feet from the control station and cannot broadcast remote identification message elements.

The FAA estimates the incremental cost to a producer of standard remote identification UAS would include the cost of a computer chip for broadcasting the remote identification message elements ($5) and a cost to make the remote identification equipment tamper

[151] *https://my.rtca.org/nc__store?category=a0L36000003g7jDEAQ.* Accessed November 13, 2018. Average price for the 11 unmanned aircraft standards available at the RTCA website. The 11 standards range in price from $140 to $675 for an average of $313.

[152] Noting the potential for earlier compliance and retrofits, the FAA may adjust its analysis of costs associated with available means of compliance for the final rule based on information received during the comment period.

[153] Based on AUVSI Unmanned Systems & Robotics Database for Air Platforms (Association for Unmanned Vehicle Systems International).

[154] Based on AUVSI Unmanned Systems & Robotics Database for Air Platforms. (Association for Unmanned Vehicle Systems International.

[155] The report length is equivalent to the report generated in NOS for the DOC. It is used as a proxy for the report that producers will generate to substantiate compliance with remote ID requirements.

[156] The time allotted in the FAA information collection related to the registration of small unmanned aircraft is used as a proxy to estimate the cost to producers for submitting a declaration of compliance for remote identification. In the Registration of Small Unmanned Aircraft information collection, it was estimated that seven minutes was required for an individual to complete a small unmanned aircraft registration. Since the DoC requires approximately twice as much information as a registration for unmanned aircraft, the FAA estimates the DoC form will take approximately 15 minutes to complete.

[157] In this calculation, the FAA assumes the fully burdened wage (compensation + benefits) to be similar to that of the wage of FAA technical subject matter expert, which is increased by a factor of 1.466 to become a fully burdened wage of $82.93 per hour, or $20.73 for 15 minutes.

[158] Note the exceptions to this rule (military, law enforcement, government not conducting operations as civil aircraft). Additionally, the FAA determines that members of a community based organization choose not to integrate remote identification into existing aircraft.

resistant ($15). For limited remote identification UAS, the incremental cost to a producer would include a software update that prevents the aircraft from flying beyond 400 feet from the operator ($5) and a cost to make the remote identification equipment tamper resistant ($15).

Operators of limited remote identification UAS must transmit message elements to the Remote ID USS from the control station, which could be an electronic device such as a smart phone or tablet.[159] For purposes of this analysis, the FAA determines that operators of limited remote identification UAS would already have a cell phone or electronic device capable of transmitting the message elements through an internet connection to the Remote ID USS and thus incur no additional costs for the purchase of a device to transmit messages to a Remote ID USS.[160]

The present value costs to U.S. producers to build UAS with remote identification totals $105 million at a three percent discount rate and $85 million at a seven percent discount rate. The annualized costs are about $12 million at either a three percent or seven percent discount rate.

iv. Developers of Remote Identification Means of Compliance

Under the proposed rule, a means of compliance would have to be accepted by the FAA before it is used in the design and production of UAS with remote identification. Means of compliance are developed by persons or organizations to describe methods by which a person responsible for the production of standard remote identification UAS or limited remote identification UAS may comply with the minimum performance requirements of this proposed rule. The FAA would review the means of compliance to determine if it meets the minimum performance requirements, and testing and validation procedures of the proposed rule. Specifically, the person or entity would have to submit a detailed description of the means of compliance, a justification for how the means of compliance meets the minimum performance requirements of the proposed rule, and any substantiating material the person or entity wishes the FAA to consider as part of the application. The FAA would indicate acceptance of a means of compliance by placing a notice in the **Federal Register** identifying the means of compliance as accepted and by notifying the submitter of the acceptance of the proposed means of compliance.

A UAS remote identification standard that could be one potential means of compliance to the proposed rule is currently being developed by ASTM International, and, for purposes of this analysis, the FAA anticipates it would be available by the beginning of year 2 of the analysis period. Total present value costs incurred by industry consensus standard-setting entities to develop and maintain a remote identification means of compliance is $1.23 million at a three percent discount rate and $1.08 million at seven percent discount rate over the ten-year period of analysis. The annualized costs are about $0.15 million at either a three percent or seven percent discount rate.

For purposes of this rulemaking, it is assumed that one additional individual or entity, would submit a means of compliance to the FAA for remote identification on an annual basis for years 2 through 10 of the analysis period. The costs would include time to initially submit the means of compliance and recurring time to accommodate changes in broadcast technology and evolution in the UTM/network requirements. Total present value costs incurred by entities to develop and maintain a remote identification means of compliance is $1.6 million at a three percent discount rate and $1.3 million at seven percent discount rate over the ten-year period of analysis. [161] The annualized costs are about $0.2 million at either a three percent or seven percent discount rate.

v. Remote ID USS MOA

The proposed rule would require persons operating UAS to transmit the message elements to a Remote ID USS over the internet. Remote ID USS will be FAA-qualified third party service providers. Each Remote ID USS would be required to establish a contractual relationship with the FAA through a MOA and to comply with a series of terms, conditions, limitations, and technical requirements, and outline how the Remote ID USS must interpret and provide data to external users, as well as store and protect such data. To implement remote identification, the FAA anticipates establishing a cooperative data exchange mechanism between the FAA and Remote ID USS.

The FAA estimates ten entities would apply to the FAA to become a Remote ID USS during year 1 of the analysis period, and nine entities would be approved.[162] Over the remaining years of the analysis period, the FAA estimates one additional entity per year would submit an application to become a Remote ID USS, and that entity would be approved by the FAA. Each of the entities would address technical requirements in the application to become a Remote ID USS that results in a 40-page document, which is then submitted to the FAA. Each of the documents would take 25 hours per page to prepare at full compensation wage of $92.72 per hour.[163] Total costs to Remote ID USS applicants during years 1 through 10 of the analysis period is about $1.6 million at a three percent discount rate and $1.4 million at a seven percent discount rate. The annualized costs are about $0.19 million at either a three percent or seven percent discount rate.

vi. FAA-Recognized Identification Areas

The FAA is proposing to allow UAS to operate without remote identification if they do so within visual line of sight within FAA-recognized identification areas. By identifying a defined location where operations of UAS without remote identification would be occurring, the FAA-recognized identification area itself becomes the form of identification. The intent is to minimize the regulatory burden for operators of UAS without remote identification, while still meeting the intent of the rule. This proposal would not preclude UAS with remote identification from operating in or transiting the airspace over FAA-recognized identification areas; it would simply limit UAS without remote identification from operating anywhere else.

Certain flying sites established within the programming of a community based organization (CBO) recognized by the Administrator would be eligible to become FAA-recognized identification areas to enable operations of UAS without remote identification within those areas, if they meet certain criteria and application deadlines. CBOs can request that an existing flying site be established as an FAA-recognized identification areas, where UAS may

[159] Based on research of publicly available UAS information, the FAA found that operators of limited remote identification UAS already typically own a smartphone or other electronic device which is capable of transmitting the location of the control station to the internet.

[160] In 2018, 77 percent of the adults in the United States owned a smart phone (*https://www.statista.com/statistics/219865/percentage-of-us-adults-who-own-a-smartphone/*).

[161] See the Regulatory Impact Analysis for this proposed rulemaking for the derivation of these estimates.

[162] Based on the number of LAANC USS.

[163] The full compensation wage (salary and benefits) is based on a 2019 FAA ''Technical'' Pay Band.

operate without remote identification equipment. The application would have to be submitted within 12 calendar months from the effective date of a final rule. After that date, the number of FAA-recognized identification areas could therefore only remain the same or decrease. The FAA also expects that as compliance with remote identification requirements becomes cheaper and easier, the need to operate only at FAA-recognized identification areas would likely decrease. The establishment of an FAA-recognized identification area is approved by the FAA until 48 calendar months after the date on which the request for establishment was approved. A person wishing to renew the establishment of the FAA-recognized identification area would have to submit a request for renewal.

The FAA estimates it would receive approximately 2,500 requests for a flying site to become an FAA-recognized identification area, and that as many as 10 percent could be disapproved due to the flying site being in a sensitive area.[164] The FAA estimates that in year 1, each request would require two hours to complete at a total compensation wage of $58.12 per hour.[165] The FAA anticipates that renewals would require less time to submit since the process is expected to be electronic, thus in years five and nine, the time estimated to complete a renewal is 30 minutes. Over the 10-year period of analysis, costs incurred by CBOs for submitting requests for FAA-recognized identification areas total $0.39 million at a three percent discount rate and $0.35 million at a seven percent discount rate. The annualized costs are about $0.05 million at either a three percent or seven percent discount rate.

Individuals that are unable to use a flying site due to FAA disapproval of the application for establishment of an FAA-recognized identification area would have the option to fly UAS with remote identification or to drive to an alternate FAA-recognized identification area. For purposes of this preliminary analysis, the FAA assumes this affected group would choose to drive to the next closest FAA-recognized identification area near their home, which would increase their driving distance to an FAA-recognized identification area an additional 32 miles per round trip, on average.[166] The FAA estimates that ten percent of the members belonging to a CBO would be travelling an additional 32 miles per outing, and that this group would travel 52 times per year to an FAA-recognized identification area for a total present value expense of $136 million at a three percent discount rate and $109 million at a seven percent discount rate over the ten-year period of analysis.[167] The annualized costs are about $16 million at a three percent and seven percent discount rate. The FAA provides a sensitivity analysis of these costs based on a range of trips per year in the Regulatory Impact Analysis report available in the docket.

The FAA requests comments on the costs and frequency of additional travel to FAA-recognized identification areas for recreational flyers affected by this provision.

vii. FAA

The FAA will incur costs to support the implementation of the proposed remote identification rule. These costs include updating the website portal for the part 48 unmanned aircraft registry to aid recreational flyers to register each unmanned aircraft individually and to facilitate foreign operators of unmanned aircraft to provide notification of identification; establishing MOAs with entities seeking to become Remote ID USS; accepting or not accepting submissions of means of compliance; accepting or not accepting submissions of declarations of compliance; approving or denying requests from CBOs for FAA-recognized identification areas; developing a website for identifying FAA-accepted means of compliance and declarations of compliance; updating the aircraft registry website; and finally, establishing a network for the data exchange between Remote ID USS and the FAA. The present value costs of this proposed rule to FAA total $56.9 million at a three percent discount rate and $50.3 million at a seven percent discount rate. The annualized costs are approximately $7.0 million at either a three percent or seven percent discount rate.

The FAA also receives cost savings from this proposed rule resulting from a reduction in hours expended on UAS investigations by aviation safety inspectors. This analysis includes quantified savings to the FAA only. A variety of other entities involved with airport operations, facility and infrastructure security, and law enforcement would also save time and resources involved with UAS identification and incident reporting, response and investigation. The FAA plans to update its estimates of savings for additional information and data identified during the comment period and development of the final rule. The present value cost savings to FAA total $2.4 million at a three percent discount rate and $1.8 million at a seven percent discount rate. The annualized costs savings are almost $0.3 million at either a three percent or seven percent discount rate.

Additionally, part 107 allows individuals to request waivers from certain provisions, including those prohibiting operations over people and at night. This proposed rule, in concert with the proposed rule for operations over people would create a cost savings for the FAA resulting from a reduction of time expended by FAA personnel processing waivers for these activities.[168]

4. Total Costs and Cost Savings

The total costs of the proposed remote identification rule include costs incurred by UAS owners, CBOs, UAS operators, UAS producers, developers of remote identification means of compliance, candidates to be Remote ID USS, and the FAA. In addition to the costs incurred by the various entities impacted by the proposed rule, the FAA has a cost savings from avoided aviation safety inspector costs due to a reduction in hours expended on UAS investigations.

Over the 10-year period of analysis, using the primary estimate this proposed rule would result in present value costs of $584 million at a three percent discount rate and $475 million at a seven percent discount rate. These costs are partially offset by present value cost savings of $2.5 million and $1.8 million at a three percent and seven percent discount rate, respectively. As a result, the net present value costs are $582 million at a three percent discount rate with annualized net costs of $68 million. At a seven percent discount rate, the net present value costs are $474 million with annualized net costs of $67 million.

The following table presents a summary of the primary, low and high estimates of the net costs of the proposed rule.

[164] *https://www.modelaircraft.org/about-ama.*

[165] U.S. Bureau of Labor Statistics, Aerospace Engineering or Operations Technician Data.

[166] Source: FAA analysis of travel distance to current flying sites based on zip codes of addresses on record for unmanned aircraft registrations for limited recreational operators show that over 94% of registered owners are within 16 miles (32 miles round trip) of a flying site that may be considered for application as an FAA-recognized identification area.

[167] Estimated using United States Department of Transportation guidance on the hourly value of travel time savings for personal purposes, the IRS mileage rate of 20 cents per mile, and the additional 32 miles are traveled at a rate of 50 miles per hour.

[168] See the appendix of the Remote Identification of Unmanned Aircraft Systems Preliminary Regulatory Impact Analysis for a quantification of these cost savings.

TABLE 8a—PRELIMINARY ESTIMATES OF NET COSTS OF PROPOSED RULE ($MILLIONS) * BASE SCENARIO—PRIMARY ESTIMATE

Affected entity/category	10-year present value (at 3%)	Annualized (at 3%)	10-year present value (at 7%)	Annualized (at 7%)
UAS Owners/Operators	$145.87	$17.10	$117.48	$16.73
Remote ID USS Subscription	241.72	28.34	191.74	27.30
UAS Producers (US and Foreign)	134.58	15.78	111.58	15.89
Developers of Remote ID Means of Compliance	2.85	0.33	2.36	0.34
Remote ID USS Memoranda of Agreement	1.60	0.188	1.43	0.2038
Community Based Organizations	0.39	0.05	0.35	0.05
FAA Costs	56.96	6.68	50.33	7.17
Total Costs	583.98	68.46	475.27	67.67
Cost Savings	(2.45)	(0.29)	(1.82)	(0.26)
Net Costs	581.52	68.17	473.46	67.41

* **Table notes:** Column totals may not sum due to rounding and parenthesis, "( )", around numbers to indicate savings.

TABLE 8b—PRELIMINARY ESTIMATES OF NET COSTS OF PROPOSED RULE ($MILLIONS) * LOW SCENARIO

Affected entity/category	10-year present value (at 3%)	Annualized (at 3%)	10-year present value (at 7%)	Annualized (at 7%)
UAS Owners/Operators	$140.99	$16.53	$113.64	$16.18
Remote ID USS Subscription	206.58	24.22	164.24	23.38
UAS Producers (US and Foreign)	116.53	13.66	97.25	13.85
Developers of Remote ID Means of Compliance	2.85	0.33	2.36	0.34
Remote ID USS Memoranda of Agreement	1.60	0.188	1.43	0.2038
Community Based Organizations	0.39	0.05	0.35	0.05
FAA Costs	56.96	6.68	50.33	7.17
Total Costs	525.91	61.65	429.61	61.17
Cost Savings	(2.45)	(0.29)	(1.82)	(0.26)
Net Costs	523.46	61.36	427.80	60.91

* **Table notes:** (i) Column totals may not sum due to rounding and parenthesis, "( )", around numbers to indicate savings. (ii) The low and high forecast scenarios are not symmetric around the base—please see the forecast report for more information. The FAA Aerospace Forecast Fiscal Years 2019–2039, available at *https://www.faa.gov/data_research/aviation/aerospace_forecasts/media/FY2019-39_FAA_Aerospace_Forecast.pdf.* The forecast provides a base (*i.e.,* likely) with high (or optimistic) and low (or pessimistic) scenarios.

TABLE 8c—PRELIMINARY ESTIMATES OF NET COSTS OF PROPOSED RULE ($MILLIONS) * HIGH SCENARIO

Affected entity/category	10-year present value (at 3%)	Annualized (at 3%)	10-year present value (at 7%)	Annualized (at 7%)
UAS Owners/Operators	$159.32	$18.68	$127.87	$18.21
Remote ID USS Subscription	336.14	39.41	264.22	37.62
UAS Producers (US and Foreign)	181.51	21.28	148.26	21.11
Developers of Remote ID Means of Compliance	2.85	0.33	2.36	0.34
Remote ID USS Memoranda of Agreement	1.60	0.188	1.43	0.2038
Community Based Organizations	0.39	0.05	0.35	0.05
FAA Costs	56.96	6.68	50.33	7.17
Total Costs	738.78	86.61	594.81	84.69
Cost Savings	(2.45)	(0.29)	(1.82)	(0.26)
Net Costs	736.33	86.32	593.00	84.43

* **Table notes:** column totals may not sum due to rounding and parenthesis, "()", around numbers to indicate savings.

The following table presents an itemized list of preliminary estimates of costs and cost savings from this proposed rule.

TABLE 9—REMOTE IDENTIFICATION COSTS AND COST SAVINGS

[$Millions]

Affected entity	3% PV	7% PV
UAS Owners/Operators:		
Registration—Recreational Flyers	$1.070	$0.887
Travel Expense*—Recreational Flyers	135.911	108.960
Registration—Part 107	0.025	0.021
Loss of UAS Use—Recreational Flyers	4.625	3.972
Loss of UAS Use—Pt 107 Operators	4.238	3.639
Community Based Organizations:		
Letters of Agreement Submission	0.389	0.354
USS Subscription Fee:		
Part 107	93.752	73.787
Limited Recreational Flyers	147.969	117.954
UAS Producers:		
Equipage Cost	105.325	84.891
Declaration of Compliance	27.178	24.795
Industry Consensus Standard—Remote ID	0.160	0.146
Industry Consensus Standard—Serial #	0.000	0.000
Labeling Requirement	1.917	1.749
Developers of Remote Identification MoC:		
Industry Consensus Standard	1.230	1.083
Developers of Remote ID MoC (Others)	1.620	1.276
Remote Identification USS:		
Cost to submit MoA with FAA	1.601	1.431
FAA Costs:		
Onboard USS Service Suppliers	2.179	1.913
Accept/Not Accept MoC	0.144	0.115
Accept/Not Accept Mfr DoC*	0.000	0.000
Web Portal Update—Registration/Notification of Identification	0.728	0.701
Approve/Disapprove Flying Field as an FAA-Recognized Identification Areas	4.669	3.966
Website for Means of Compliance/Declarations of Compliance	2.294	2.000
Remote Identification USS Data Exchange	46.950	41.631
Total Costs	583.975	475.271
Cost Savings: Reduced Hours FAA UAS Investigations	(2.453)	(1.815)
Total Cost Savings	(2.453)	(1.815)
Net Costs	581.522	473.456
Annualized Net Costs	68.172	67.409

* Automated approval through FAA drone zone portal.
Note: Column totals may not sum due to rounding.

The estimated costs are presented on an annual basis in the table below.

TABLE 10—REMOTE IDENTIFICATION COSTS AND COST SAVINGS—YEARS 1–10

[$Millions]

Costs by affected entity	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Total
Costs:											
UAS Owners (3% PV)	$0.167	$15.818	$15.714	$24.420	$15.394	$15.247	$15.070	$14.867	$14.688	$14.483	$145.87
UAS Owners (7% PV)	0.161	14.656	14.018	20.968	12.724	12.130	11.541	10.961	10.424	9.894	117.48
Community Based Org. (3% PV)	0.282	.....	.....	.....	0.056	.....	.....	.....	0.050	.....	0.39
Community Based Org. (7% PV)	0.272	.....	.....	.....	0.047	.....	.....	.....	0.036	.....	0.35
USS Subscription Fee (3% PV)	.....	13.058	29.430	29.681	29.384	28.962	28.491	28.031	27.572	27.112	241.72
USS Subscription Fee (7% PV)	.....	12.099	26.252	25.485	24.288	23.042	21.819	20.667	19.568	18.520	191.74
UAS Manufacturer (3% PV)	0.000	39.446	16.244	8.366	12.709	14.362	9.066	11.955	13.038	9.396	134.58
UAS Manufacturer (7% PV)	0.000	36.550	14.489	7.182	10.505	11.426	6.943	8.814	9.253	6.418	111.58
Developers of Remote ID MoC (3% PV)	0.589	0.215	0.226	0.236	0.245	0.253	0.261	0.268	0.275	0.280	2.85
Developers of Remote ID MoC (7% PV)	0.567	0.200	0.202	0.203	0.203	0.202	0.200	0.198	0.195	0.192	2.36
Remote ID USS (3% PV)	0.900	0.087	0.085	0.082	0.080	0.078	0.075	0.073	0.071	0.069	1.60
Remote ID USS (7% PV)	0.867	0.081	0.076	0.071	0.066	0.062	0.058	0.054	0.050	0.047	1.43

TABLE 10—REMOTE IDENTIFICATION COSTS AND COST SAVINGS—YEARS 1–10—Continued
[$Millions]

Costs by affected entity	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Total
FAA (3% PV)	28.694	3.298	3.202	3.109	3.990	2.930	2.845	2.762	3.545	2.590	56.96
FAA (7% PV)	27.619	3.055	2.856	2.669	3.297	2.331	2.178	2.036	2.515	1.769	50.33
Total Costs—3% PV	30.632	71.922	64.901	65.894	61.858	61.832	55.809	57.957	59.239	53.930	583.98
Total Costs—7% PV	29.485	66.641	57.892	56.578	51.130	49.193	42.740	42.730	42.041	36.840	475.27
Costs Savings—3% PV						(0.520)	(0.505)	(0.490)	(0.476)	(0.462)	(2.453)
Costs Savings—7% PV						(0.414)	(0.387)	(0.361)	(0.338)	(0.316)	(1.815)
Net Costs—3% PV	30.632	71.922	64.901	65.894	61.858	61.312	55.304	57.467	58.763	53.468	581.52
Net Costs—7% PV	29.485	66.641	57.892	56.578	51.130	48.779	42.354	42.368	41.703	36.524	473.46

Table notes: PV = Present Value and "( )" = denotes savings.

The key cost driver of the proposed rule is the USS subscription fee, followed by travel expenses for a select group of recreational flyers, and the cost of compliance for UAS producers. The present value cost of USS subscription fees is $241.7 million at a three percent discount rate and $191.7 million at a seven percent discount rate. The annualized cost of USS subscription fees is $28.3 million at a three percent and $27.3 million at a seven percent discount rate. This impact represents over 41.4 percent of the total costs of the proposed rule. The travel expense for a select group of recreational users represents 23.3 percent of the proposed rule's total costs, and costs to UAS producers are 23.0 percent of the total costs.

The FAA believes this cost impact is justified in order to reduce the delay (by two years) in implementing for law enforcement, security partners, the FAA, and airports to use remote ID information. The FAA alternatively considered allowing three years beyond the producer compliance date for owners and operators to comply with the remote identification requirements of this proposed rule in the "Alternatives Considered" section. This period of time coincides with the three-year lifespan of a small UAS and would have prevented grounding or replacement of UAS prior to the end of useful life. However, the FAA determined that the three-year compliance period was less preferable, because it prolonged safety and security risks to air traffic and airports by delaying the ability of law enforcement personnel to identify unauthorized UAS operations. To reduce the delay in implementing remote identification, the operational compliance period was reduced from three years to one year.[169]

A potential offsetting benefit of the one-year operational compliance period is that a portion of part 107 operators may be able to immediately perform operations over people and operations at night without a waiver once their UAS has remote identification. As many as 68.4 million operations over people and at night could be enabled by the proposed shortening the of the operational compliance period. Assuming that the flight time for each of these 68.4 million operations lasts 30 minutes and the wage for a remote pilot is $12.09 per operation, the economic benefit in terms of pilot wages alone is about $827 million undiscounted (not present value).[170]

5. Alternatives Considered

The FAA considered both more and less costly alternatives as part of the proposed rule. The alternatives and the FAA's reasons for rejecting those alternatives are discussed below.

i. Alternative Compliance Periods—Producers

The chosen compliance period to estimate producer costs is two years beyond the effective date of the final rule. The FAA considered a producer compliance period of one year, especially considering potential retrofits, however this alternative was determined to be impractical since no FAA-accepted means of compliance currently available for producers to build to. Until an FAA-accepted means of compliance exists, producers would not be able to submit a declaration of compliance. Accordingly, the FAA believes it is practical for an industry consensus standard to be developed that could be submitted for acceptance as a means of compliance by the end of year 1 after the effective date of the final rule, with an additional year for producers to design, build, and test UAS that meet the standard.

The two-year compliance period for producers is consistent with information on timelines for available technology from the UAS–ID ARC Report and expected availability of USS. The ARC found technologies similar to planned Remote ID USS transmissions have a "readiness for implementation" of one year or less. This means products would be available for original equipment manufacturers within one year of the requirements being known. This one-year period would start after the availability of FAA-accepted means of compliance and Remote ID USS—the FAA expects means of compliance and Remote ID USS availability to take up to one year after the effective date of the final rule.

At this time, the two-year producer compliance period appears reasonable and has a technical basis. The FAA has not identified or analyzed an alternative. The current proposal does not preclude earlier producer compliance (in light of a potential economic incentive to comply earlier). Likewise, this proposal would not preclude producer compliance through retrofits within the two-year producer compliance period or earlier, as long as retrofits use an FAA-accepted means of compliance.

ii. Alternative Operational Compliance Period

The FAA considered allowing three years beyond the producer compliance date for owners and operators to comply with the remote identification requirements of this proposed rule. This

[169] As previously discussed, the proposal does not preclude early compliance for producers or operators to realize earlier expanded operations and commercial opportunities. The FAA provides a sensitivity analysis of costs for earlier developer and producer compliance by the effective date of the final rule (60 days after publication). This analysis shows that if Remote ID USS and UAS with remote identification are available by the effective date of the final rule (as proposed), then total net costs reduce by about 60–70% and operations over people and at night would be enabled beginning in the first year after publication.

[170] *https://www.payscale.com/research/US/Job=Drone_Pilot/Hourly_Rate.*

period of time coincides with the three-year lifespan of a small UAS and would have prevented grounding or replacement of UAS prior to end of useful life. However, the FAA determined that the three-year compliance period was less preferable since it prolonged safety and security risks to air traffic and airports by delaying the ability of law enforcement personnel to identify unauthorized UAS operations. In addition, as previously discussed, some producers would be able to retrofit UAS in the existing fleet and comply early. To reduce the delay in implementing remote identification, the owner/operator compliance period was reduced from three years to one year.

The FAA analyzed the costs of allowing up to three years for owners/operators to be in compliance and found this alternative minimizes costs to owners/operators of existing UAS that could not be retrofit, since on average the affected existing fleet of UAS could be replaced at the end of useful life (three years). In addition, this alternative is more likely to reduce uncertainty of adverse impacts to producers with inventories of UAS produced before the compliance date that would likely not meet the remote identification provisions of this proposal, including with retrofits. Given the average three-year UAS lifespan, the three-year operational compliance period would likely assist producers in depleting existing non-compliant inventories with reduced impact compared to the proposed one-year compliance period.

Under this alternative, present value costs at a three percent discount rate total $494.2 million with annualized costs of $57.9 million. The present value costs at a seven percent discount rate total $394.4 million with annualized costs of $56.2 million. Present value cost savings at a three percent discount rate total $2.45 million with annualized cost savings of $0.29 million. At a seven percent discount rate, present value costs savings total $1.82 million with annualized cost savings of $0.26 million. As a result, present value net costs at a three percent discount rate are $491.7 million with annualized net costs of $57.7 million. At a seven percent discount rate, present value net costs are $392.6 million with annualized net cost of $55.9 million. The cost associated with this alternative are slightly less than the proposal that assumes producers would be capable of retrofits within one year of the effective date of the final rule.

iii. Requiring ADS–B Out

The FAA could have proposed transponders or ADS–B Out for UAS as a means to remotely identify those aircraft. The FAA does not propose the use of transponders or ADS–B Out for remote identification for three primary reasons. First, the use of these technologies would require significant additional infrastructure, including radars and receivers, to cover the lower altitudes where unmanned aircraft are expected to primarily operate. Second, the FAA expects that, due to the volume of unmanned aircraft operations projected, the additional radio frequency signals would saturate the available spectrum and degrade the overall cooperative surveillance system. Finally, transponders and ADS–B Out do not provide any information about the location of control stations, as these systems were designed for manned aircraft. For these reasons, the FAA has determined that existing cooperative surveillance systems are incapable of supporting UAS remote identification and is proposing a new cooperative surveillance technology specifically for UAS.

iv. FAA Provided Remote Identification Services

The proposed rule assumes that Remote ID USS would come forward to offer remote identification services to indiviRequireduals operating UAS in the airspace of the United States. The alternative would be for the FAA to provide these services directly to operators of UAS instead of providing them through a third-party provider. The FAA chose the Remote ID alternative for several reasons. First, the LAANC service model has been effective due to the success of public and private sector partnerships in implementing LAANC and clear Congressional approval of the model. Second, similar to LAANC USS, the FAA will not provide payment for the development or operation of Remote ID USS products or services. The FAA anticipates that the Remote ID USS would recoup the costs of providing services either through the sale of subscriptions for remote identification services, online advertising, or ''value added'' services that can be purchased from the service provider.

v. Not Allowing FAA-Recognized Identification Areas

The FAA considered not allowing FAA-recognized identification areas. If the proposed rule did not allow for these areas, operators of UAS with no remote identification equipment would not be allowed to operate unless the UAS were redesigned to have remote identification. By identifying a defined location where operations of UAS without remote identification would be occurring, the FAA-recognized identification area itself becomes the form of identification. The intent for allowing FAA-recognized identification areas is to minimize the regulatory burden for operators of existing UAS used exclusively for limited recreational operations that do not have remote identification equipment, while still meeting the intent of the rule.

Assumptions

- Individuals want to operate UAS without remote identification within FAA-recognized identification areas.
- Each individual owns two aircraft which are used for limited recreational operations.
- These unmanned aircraft have a lifespan that extends beyond the 10-year analysis period of the proposed rulemaking.

Should the FAA not allow FAA-recognized identification areas for the operation of UAS without remote identification, it is estimated that as many as 400,000 UAS that are used for recreational flying would be grounded at the end of year 3.

vi. Requiring All UAS To Be Standard Remote Identification UAS (Except for UAS Without Remote Identification Operated at FAA-Recognized Identification Areas)

The preferred alternative allows operators of limited remote identification UAS to operate at places other than FAA-recognized identification areas. The FAA considered requiring all UAS to be standard remote identification UAS. Under this alternative, owners desiring to operate any UAS that is not a standard remote identification UAS would be required to travel to an FAA-recognized identification area. The FAA analyzed the shortest distance between zip codes for each online hobbyist registration and the zip code closest to one of over 2,000 AMA flying fields.[171] The zip code analysis indicates a person operating UAS that are not standard remote identification UAS would be required to travel an average of 16 miles one-way to the nearest FAA-recognized identification area.

Assumptions

- Operators of UAS that are not standard remote identification UAS are

[171] As of April 26, 2019, there are 1,013,893 individuals registered as hobbyists.

willing to travel to an FAA-recognized identification area.

• The average distance between an FAA-recognized identification area and the homes for operators of UAS used for limited recreational operations is 32 miles round trip.

On average, operators of UAS that are not standard remote identification UAS would travel to an FAA-recognized identification area 52 times per year.

• The share of the UAS fleet operated by recreational flyers that is not a standard remote identification UAS is assumed to be 82 percent.

Based on these assumptions, the present value travel costs and opportunity cost of time accrued to recreational flyers is $2,276 million at a seven percent discount rate. These costs accrue during years 4–10 of the analysis period. Additionally, under this alternative, affected recreational flyers would no longer be required to subscribe to a Remote ID USS since they would only be flying at an FAA-recognized identification area. Thus this affected group would avert subscription costs. Averted present value subscription costs in this alternative total $72.7 million at a seven percent discount rate.

As discussed above, the costs of this alternative are calculated based on individuals traveling an average of 52 times per year to an FAA-recognized identification area. Given that there is uncertainty regarding the average number of trips that this affected group would take on an annual basis, the FAA conducted a sensitivity analysis by varying the input for travel frequency. Using 26 trips per year, the total cost becomes $1,138 million, and using 90 trips per year the cost is $3,939.5 million.[172]

vii. Grandfathering of Legacy UAS

The FAA considered allowing UAS that would not be able to retrofit to continue operating in the airspace of the United States using software-based flight notification with telemetry.[173] This would be accomplished through software based mission planning services. The UAS operator would self-declare information pertaining to area their drone would be flying in, including altitude, duration and type of aircraft. This information would be shared prior to flight to enable authorities to clearly identify compliant operations. Software apps are currently available on the marketplace that would support this alternative.

The FAA did not pursue this option because it would not meet the mission needs of the proposed rule for security, performance, and information quality. While this alternative would allow for the rapid adoption of Remote ID and Tracking for nearly all classes of UAS, it relies on the individual operator to proactively report their location to a USS. Conversely, the proposed rule requires remote identification UAS to automatically connect to a USS. If the UAS cannot connect to the USS, the unmanned aircraft will not take off.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

The FAA believes this proposed rule would have a significant economic impact on a substantial number of small entities. Therefore, under Section 603(b) of the RFA, the initial analysis must address:

• Description of reasons the agency is considering the action.

• Statement of the legal basis and objectives for the proposed rule.

• Description of the record-keeping and other compliance requirements of the proposed rule.

• All Federal rules that may duplicate, overlap, or conflict with the proposed rule.

• Description and estimated number of small entities to which the proposed rule will apply.

• Description of Significant Regulatory Alternatives for Small Entities.

1. Description of Reasons the Agency Is Considering the Action

The remote identification of UAS is necessary to ensure public safety and the safety and efficiency of the airspace of the United States. The remote identification framework would provide UAS-specific data, which could be used in tandem with new technologies and infrastructure to facilitate more advanced operational capabilities (such as detect-and-avoid and aircraft-to-aircraft communications that support beyond visual line of sight operations) and to develop the necessary elements for UTM. Furthermore, remote identification of UAS would provide airspace awareness to the FAA, national security agencies, and law enforcement entities, which could be used to distinguish compliant airspace users from those potentially posing a safety or security risk.

Current rules for registration and marking of unmanned aircraft facilitate the identification of the owners of unmanned aircraft, but normally only upon physical examination of the aircraft. Existing electronic surveillance technologies, like transponders and ADS–B, were considered as potential solutions for the remote identification of UAS but were determined to be unsuitable due to the lack of infrastructure for these technologies at lower altitudes and potential saturation of available radio frequency spectrum. Currently, the lack of real-time and historical data regarding UAS operations affects the ability of the FAA to oversee the safety and security of the airspace of the United States, creates challenges for national security agencies and law enforcement entities in identifying threats, and impedes the further integration of UAS into the airspace of the United States. The FAA proposes to address the identification issues associated with UAS by requiring the use of systems and technology to enable the remote identification of UAS.

The proposed requirement is consistent with the FAA's safety mission of overseeing and promoting safety in air commerce and national security and promoting the safe and

[172] These trip frequencies assume that an individual travels, on average, every other weekend (26 trips/year), every weekend (52 trips/year), or once every four days (90 trips/year) to an FAA-Recognized Identification Area. This is used as a sensitivity analysis of the number of times an individual would travel to an FAA-recognized identification area in the period of one year. The lower bound of the sensitivity analysis is based on the average number of rounds a golfer plays in a year (Source: *https://www.ngf.org/golf-industry-research/#golfers*). The upper bound of the sensitivity analysis is based on the number of times in a year a person engages in a running/jogging/trail running activity (Source: *https://outdoorindustry.org/resource/2018-outdoor-participation-report/*. Page 23).

[173] This option was discussed in the UAS Identification and Tracking (UAS ID) Aviation Rulemaking Committee (ARC)—ARC Recommendations Final Report, September 30, 2017.

efficient use of the navigable airspace and would serve the public interest by creating situational awareness of all UAS flying in the airspace of the United States. It would also strengthen the FAA's oversight of UAS operations and support efforts of law enforcement to address and mitigate disruptive behavior and hazards, which may threaten the safety and security of the airspace of the United States, other UAS, manned aviation, and persons and property on the ground. The near real-time access to remote identification information would also assist Federal security partners in threat discrimination—allowing them to identify an operator and make an informed decision regarding the need to take actions to mitigate a perceived security or safety risk. The proposed rule would enhance the FAA's ability to monitor compliance with applicable regulations; would contribute to the FAA's ability to undertake compliance, enforcement, and educational actions required to mitigate safety risks; and would advance the safe integration of UAS into the airspace of the United States.

2. Statement of the Legal Basis and Objectives for the Proposed Rule

Statement of the legal basis. The FAA promulgates this rulemaking pursuant to various authorities. First, under 49 U.S.C. 40103(b)(1) and (2), the FAA is directed to issue regulations: (1) To ensure the safety of aircraft and the efficient use of airspace; and (2) to govern the flight of aircraft for purposes of navigating, protecting and identifying aircraft, and protecting individuals and property on the ground.

Second, under 49 U.S.C. 44701(a)(5), the FAA must promote safe flight of civil aircraft by prescribing regulations the FAA finds necessary for safety in air commerce and national security.

Third, under section 2202 of Public Law 114–190, the Administrator must convene industry stakeholders to facilitate the development of consensus standards for remotely identifying operators and owners of UAS and associated unmanned aircraft and to issue regulations or guidance based on any standards developed.

Fourth, under 49 U.S.C. 44805, the Administrator must establish a process for, among other things, accepting risk-based consensus safety standards related to the design and production of small UAS.

Fifth, under 49 U.S.C. 44805(b)(7), the Administrator must take into account any consensus identification standard regarding remote identification of unmanned aircraft developed pursuant to section 2202 of Public Law 114–190.

Sixth, under 49 U.S.C. 44809(f), the Administrator is not prohibited from promulgating rules generally applicable to unmanned aircraft, including those unmanned aircraft eligible for the exception for limited recreational operations of unmanned aircraft. Among other things, this authority extends to rules relating to the registration and marking of unmanned aircraft and the standards for remotely identifying owners and operators of UAS and associated unmanned aircraft.

Seventh, the FAA has authority to regulate registration of aircraft under 49 U.S.C. 44101–44106 and 44110–44113 which require aircraft to be registered as a condition of operation and establish the requirements for registration and registration processes.

Lastly, this rulemaking is promulgated under the authority described in 49 U.S.C. 106(f), which establishes the authority of the Administrator to promulgate regulations and rules, and 49 U.S.C. 40101(d), which authorizes the FAA to consider in the public interest, among other things, the enhancement of safety and security as the highest priorities in air commerce, the regulation of civil and military operations in the interest of safety and efficiency, and assistance to law enforcement agencies in the enforcement of laws related to regulation of controlled substances, to the extent consistent with aviation safety.

Objectives for the proposed rule. The FAA is integrating UAS operations into the airspace of the United States through a phased, incremental, and risk-based approach.[174]

On June 28, 2016, the FAA achieved a major step towards UAS integration when it issued the final rule for Operation and Certification of Small Unmanned Aircraft Systems.[175] This was one of multiple UAS-related regulatory actions taken by the FAA to enable the safe integration of UAS into the airspace of the United States. As technology progresses and the utility of UAS increases, the FAA anticipates a need for further rulemaking to continue to foster the safe, secure, and efficient use of the airspace of the United States. The FAA believes that the next step in the regulatory process involves the enactment of regulatory requirements to enable the remote identification of UAS operating in the airspace of the United States.

This action would implement requirements for the remote identification of UAS. The remote identification of UAS in the airspace of the United States would address safety, security, and law enforcement concerns regarding the further integration of these aircraft into the airspace while also enabling greater operational capabilities.

3. Description of the Record-Keeping and Other Compliance Requirements of the Proposed Rule

UAS owners, UAS operators (including pilots, remote pilots, and persons manipulating the flight controls of UAS), UAS manufacturers (*i.e.,* persons responsible for the production of UAS), developers of remote identification means of compliance, and Remote ID USS would have important roles in the remote identification of UAS. Please see section I.C of this preamble for additional detail describing the roles and responsibilities of each group within the scope of the proposed rule.

This proposed rule imposes recordkeeping requirements. First, all entities intending to use the small unmanned aircraft for limited recreational operations would be required to include the manufacturer, model, and serial number of each small unmanned aircraft in the registration of that aircraft. Requiring the manufacturer, model, and serial number would obligate registrants to add this additional information to the registration for all their aircraft used for limited recreational operations.

Next, the FAA is proposing that persons who develop standards that the FAA may accept as a means of compliance submit those standards for review and acceptance by the FAA. A person who submits a means of compliance is proposed to be required to retain the data for as long as the means of compliance is accepted plus an additional 24 calendar months.

The FAA is proposing that persons who produce UAS with remote identification must meet the minimum performance requirements of the proposed rule using an FAA-accepted means of compliance. To demonstrate the UAS has been produced to meet the minimum performance requirements using an FAA-accepted means of compliance, persons responsible for the production of UAS would be required to submit to the FAA a declaration of compliance. A person who submits a declaration of compliance would be required to retain the data submitted for 24 calendar months after the cessation

[174] Consult *http://www.faa.gov/uas* for additional information regarding UAS operations.

[175] 81 FR 42064.

of production of the UAS with remote identification.

The proposed rule would require a producer to label the UAS to show that it was produced with remote identification technology capable of meeting the proposed rule. The proposed labeling requirement would inform the operator that the UAS is eligible to conduct operations within the airspace of the United States.

The FAA proposes standard remote identification UAS and limited remote identification UAS be designed and produced to connect to the internet and transmit remote identification message elements to Remote ID USS. The collection of this information in the form of message elements is necessary to comply with the statutory requirement to develop standards for remotely identifying operators and owners of UAS and associated unmanned aircraft. The information transmitted between the UAS and the Remote ID USS is collected electronically without input from the human operator, thus there is no burden on the person manipulating the flight controls of the unmanned aircraft to manually submit information to the Remote ID USS. There would be an exchange of information between the Remote ID USS and the FAA when identification of the UAS is required. At this time, it is unknown how often exchanges between the FAA and Remote ID USS will occur.

To support the transmission of these message elements, the FAA envisions that a Remote ID USS (an FAA-qualified third party service provider) demonstrate four primary capabilities: (1) The ability to share the remote identification message elements in near real-time with the FAA upon request; (2) the ability to maintain remote identification information; (3) the ability to meet contractually-established technical parameters; and (4) the ability to inform the FAA when their services are active and inactive. Each Remote ID USS would be required to establish a contractual relationship with the FAA through a Memorandum of Agreement (MOA), and to comply with a series of terms, conditions, limitations, and technical requirements, and to outline how the Remote ID USS must interpret and provide data to external users, as well as store and protect such data.

The FAA is proposing that representatives of CBOs submitting applications for flying sites to become FAA-recognized identification areas may apply for such designation in a form and manner acceptable to the FAA. The application would collect certain information regarding the location and requirements of the flying site, and require the CBO representative to confirm certain information regarding the site.

4. All Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

The FAA is unaware that the proposed rule will overlap, duplicate or conflict with existing Federal rules.

5. Description and an Estimated Number of Small Entities to Which the Proposed Rule Will Apply

This proposed rule would apply to four communities of small entities: Producers of UAS, entities that either own or operate UAS, community based organizations, and Remote ID USS.

The first affected group of small entities discussed will be producers. For purposes of this rulemaking, the FAA estimates that there are approximately 154 U.S. entities that produce small UAS as of January 2019.[176] Out of these 154 U.S. entities, data on entity size, as defined by number of employees, was available for only 117. Out of the 117 entities for which data was available, 87 of the entities are categorized as small, 12 of the entities are categorized as medium, and 18 are categorized as large.[177] Data for the remaining 37 entities was not available and thus the entity size could not be determined, however a majority are believed to be small. NAICS code 336411 is titled ''Miscellaneous Aircraft Manufacturing.'' The manufacture of unmanned and robotic aircraft are included in this code. The SBA defines industries within this code to be small if they employ 1,500 employees or less.

The next group of entities affected by the proposed rule are owners and operators of UAS that conduct operations under part 107 or part 91. Based on analysis conducted by the Association for Unmanned Vehicle Systems International (AUVSI), over 85 percent of part 107 waivers granted have been to small businesses.[178] Using this finding based on part 107 waiver data as a proxy for the size of all entities operating UAS under part 107, the FAA assumes that approximately 85 percent of the entities operating under part 107 are small. The FAA requests information on this assumption and the number of small entities affected by the proposal.

Model aircraft organizations [179] currently operating flying sites are affected by this rulemaking. These organizations would be required to submit a request to the FAA to have an established flying site approved as an FAA-recognized identification area. Based on membership of AMA (Academy of Model Aeronautics), it is estimated that each flying club has, on average, 78 members.[180] SBA standards for NAICS code 713990 ''All Other Amusement and Recreation Activities'' is $7.5 million in annual receipts, or less, to be considered a small entity. Financial records for these individual community based organizations are not public information, but it is believed that none have receipts totaling $7.5 million, and thus each is considered a small entity.

The last group of entities affected by the proposed rule are Remote ID USS. Because Remote ID USS do not yet exist, the FAA is unable to classify the entities as either small or large.

The FAA determines that a majority of entities impacted by this proposed rule are small. Therefore, the FAA determines this proposed rule would have a significant economic impact on a substantial number of small entities.

6. Description of Significant Regulatory Alternatives Considered for Small Entities

The FAA considered both more and less costly alternatives as part of the proposed rule because the RFA requires the agency to consider significant regulatory alternatives that meet the agency's statutory objectives and minimize the costs to small entities. The alternatives and the FAA's reasons for rejecting those alternatives are discussed below.

i. Alternative Compliance Periods—Producers

The chosen compliance period to estimate producer costs is two years beyond the effective date of the final rule. The FAA considered a producer compliance period of one year; however, this alternative was determined to be impractical. One

[176] AUVSI Air Platform Database. Accessed January 2019.

[177] This is based on AUVSI criteria for number of employees. The AUVSI criteria for a manufacturer of unmanned aircraft to be identified as a small entity is 49 employees or fewer. The criteria to be identified as a medium entity is 50–499 employees. Large entities are determined to have 500 or more employees.

[178] (AUVSI) Association of Unmanned Vehicle Systems International. As of July 31, 2017, 1,074 waivers had been issued of which 85 percent were granted to small entities (entities with less than 10 employees).

[179] Academy of Model Aeronautics (AMA), *http://www.modelaircraft.org/aboutama/whatisama.aspx;* more than 2,500 AMA fields.

[180] Ibid. Based on 2018 AMA membership of 195,000 and approximately 2,500 AMA fields, the average membership per field is estimated to be 78 individuals.

reason that the alternative was not chosen is that there is no FAA-accepted means of compliance currently available for producers to build to. Until an FAA-accepted means of compliance exists, producers would not be able to submit a declaration of compliance. Accordingly, the FAA believes it is practical for an industry consensus standard to be developed that could be submitted for acceptance as a means of compliance by the end of year one after the effective date of the final rule, with an additional year for producers to design, build, and test UAS that meet the standard.

The two-year compliance period for producers is consistent with information on timelines for available technology from the UAS–ID ARC Report and expected availability of USS. The ARC found technologies similar to planned Remote ID USS transmissions have a ''readiness for implementation'' of one year or less. This means products would be available for original equipment manufacturers (producers) within one year of the requirements being known. This one-year period would start after the availability of FAA-accepted means of compliance and services from Remote ID USS—we expect means of compliance and Remote ID USS availability to take up to one year after the effective date of the proposed rule.

At this time, the two-year producer compliance period appears reasonable and has a technical basis. The FAA has not identified or analyzed an alternative. The current proposal does not preclude earlier producer compliance (potential economic incentive to comply earlier). The FAA requests comments on alternative compliance periods that would minimize costs for small producers.

ii. Alternative Operational Compliance Periods

The FAA considered three years beyond the producer compliance date for owners and operators to comply with the remote identification requirements of this proposed rule. This period of time coincides with the three-year lifespan of a small UAS and would have prevented costly grounding or replacement of UAS prior to end of useful life. However, the FAA determined that the three-year compliance period was unacceptable since it prolonged safety and security risks to air traffic and airports by delaying the ability of law enforcement personnel to identify unauthorized UAS operations. To reduce the delay in implementing remote identification, the owner/operator compliance period was reduced from three years down to one year.

The FAA analyzed the costs of allowing up to three years for owners/operators to be in compliance and found this alternative minimizes costs to owners/operators since on average the affected existing fleet of UAS could be replaced at the end of useful life (three years). In addition, this alternative is more likely to reduce uncertainty of adverse impacts to producers with inventories of UAS produced before the compliance date that would likely not meet the remote identification provisions of this proposal. Given the average three-year UAS lifespan, the three-year operational compliance period would likely assist producers in depleting existing non-compliant inventories with reduced impact compared to the proposed one-year compliance period.

Under this alternative, net present value costs at a three percent discount rate are $491.7 million with annualized net costs of $57.7 million. At a seven percent discount rate, net present value costs are $392.6 million with annualized net cost of $55.9 million. These costs are lower than the costs of the proposed rule: the proposal results in present value costs of about $582 million at a three percent discount rate with annualized net costs of about $68.2 million, and net present value costs of about $473 million at a seven percent discount rate with annualized net costs of about $67.4 million. This alternative would likely minimize impacts on small entities affected by this proposed rule. This alternative does not include impacts and costs related to the loss of use associated with UAS that cannot be retrofit and earlier Remote ID USS subscription fees that would occur under the proposed rule.

iii. FAA-Provided Remote Identification Services

The proposed rule assumes that Remote ID USS will come forward to offer remote identification services to individuals operating UAS in the airspace of the United States. The alternative would be for the FAA to provide these services directly to operators of UAS instead of providing them through a third party provider. The FAA is uncertain how it would recoup costs for these services, at least in the short run. The FAA chose the preferred alternative for several reasons. First, the LAANC service model has been effective due to the success of public and private sector partnerships in implementing LAANC and clear Congressional approval of the model. Second, similar to LAANC USS, the FAA will not provide payment for the development or operation of Remote ID USS products or services. The FAA anticipates that the Remote ID USS would recoup the costs of providing services either through the sale of subscriptions for remote identification services, on-line advertising, or ''value added'' services that can be purchased from the service provider. The FAA requests comments on alternatives for remote identification services that would minimize cost to small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

The FAA has assessed the potential effect of this proposed rule and determined that it ensures the safety of the American public and does not exclude imports that meet this objective. As a result, this proposed rule is not considered as creating an unnecessary obstacle to foreign commerce.

The FAA has considered the ongoing work of international organizations and other countries. No international (*e.g.,* ICAO) standards currently exist for the types of operations the FAA proposes in this rule. The FAA will maintain its awareness of other countries' and international organizations' work in developing potential standards relevant to UAS operations.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently

uses an inflation-adjusted value of about $155 million in lieu of $100 million.

Although this proposed rule is a significant regulatory action, it does not contain a mandate that would impose costs of more than $155 million annually. As a result, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public.

There are several new information collections that the FAA is proposing as part of this rule, as well as an existing information collection that is proposed to be revised.

1. New Information collection: Additions to Small Unmanned Aircraft Registration System

In this rule, the FAA is proposing to require that all persons registering small unmanned aircraft under part 48 include one or more telephone number(s) of the applicant, and the manufacturer, model, and serial number of the unmanned aircraft as part of the registration information. This information would then be included on the Certificate of Aircraft Registration.

The FAA recognizes that persons who currently register their small unmanned aircraft intending to use the small unmanned aircraft as other than a model aircraft are already required to provide the manufacturer, model, and serial number, if available, under § 48.100(a). The FAA proposes to require all persons who register their small unmanned aircraft to include manufacturer name, model name, serial number, and telephone number(s) in the registration. Thus, some persons who have previously registered small unmanned aircraft, but did not include telephone number, manufacturer, model, and serial number information, would be required to update the registration of that aircraft.

The FAA is also proposing to require all individuals intending to use the small unmanned aircraft exclusively as a model aircraft to include the telephone number(s) of the applicant, and the manufacturer, model, and serial number of each small unmanned aircraft in the registration. Requiring the telephone number(s), manufacturer, model, and serial number would necessitate amending the registration for all registered model aircraft. Additionally, the FAA proposes to revise the registration requirements in Part 48 to remove the provisions that allow small unmanned aircraft to register as model aircraft under a single Certificate of Aircraft Registration and to require the individual registration of each aircraft, regardless of its intended use.[181] This means that every small unmanned aircraft registered under part 48 would need to have its own Certificate of Aircraft Registration.

As has been discussed, the FAA recognizes that some small unmanned aircraft would already have serial numbers, while others would require the FAA to assign serial numbers as part of the process of amending the registration. Requiring owners of unmanned aircraft to provide their telephone numbers as part of the registration process would assist FAA and law enforcement to disseminate safety and security related information to the registrant in near real-time.

Therefore, the FAA is proposing a new information collection, Additions to Small Unmanned Aircraft Registration System, to reflect the additional burden of adding the telephone number, manufacturer, model, and serial number to each registration and to reflect the burden of having each unmanned aircraft registered separately.

Use: The FAA would use the telephone number, manufacturer, model, and serial number to assist with the remote identification of unmanned aircraft systems. The serial number, which may be transmitted as the unique identifier of an unmanned aircraft, would help to identify the aircraft and associate the aircraft with its owner. The FAA would use the telephone number of the owner to disseminate safety and security-related information to the registrant.

TABLE 11—SMALL UNMANNED AIRCRAFT REGISTRATION—LIMITED RECREATIONAL OPERATIONS INCREMENTAL HOURLY BURDEN AND COST

[$Mil.]

Year	Registrations	Hourly burden	Total cost ($Mil.)
1	442,623	12,082	$0.17
2	335,236	8,040	0.11
3	372,127	8,899	0.13
Total	1,149,986	29,021	0.41

Row and column totals may not sum due to rounding.

2. New Information Collection: Identification of Foreign-Registered Civil Unmanned Aircraft Operating in the Airspace of the United States

The FAA is proposing to extend the operational requirements of part 89 to persons operating foreign civil unmanned aircraft in the United States. These persons would have to comply with the remote identification requirements, which means that these persons would have to operate foreign civil unmanned aircraft that qualify as standard remote identification UAS, limited remote identification UAS, or that have no remote identification equipment but are operated within an FAA-recognized identification area.

The FAA is proposing to allow a person to operate foreign-registered civil unmanned aircraft in the United States only if the person submits a notice of identification to the Administrator. The notice would include the following information to allow FAA to associate an unmanned aircraft to a responsible person:

(1) The name of the operator and, for an operator other than an individual, the name of the authorized

[181] This proposal uses the term ''limited recreational operations'' when discussing registration requirements under part 48. Part 48 uses the term ''model aircraft'' to describe recreational UAS operations. The FAA considers that model aircraft under part 48 are consistent with the ''limited recreational operations'' described in 49 U.S.C. 44809, therefore ''limited recreational operations'' has been used throughout to ensure consistency of terminology with current statutory requirements.

representative providing the notification.

(2) The physical address of the operator and, for an operator other than an individual, the physical address for the authorized representative. If the operator or authorized representative does not receive mail at the physical address, a mailing address must also be provided.

(3) The physical address of the operator in the United States.

(4) One or more telephone number(s) where the operator can be reached while in the United States.

(5) The email address of the operator or, for an operator other than an individual, the email address of the authorized representative.

(6) The aircraft manufacturer and model name.

(7) The serial number of the aircraft.

(8) The country of registration of the aircraft.

(9) The registration number of the aircraft.

Once a person submits a notice of identification, the FAA would issue a confirmation of identification. A person operating a foreign-registered unmanned aircraft in the United States would have to maintain the confirmation of identification at the UAS' control station and would have to produce it when requested by the FAA or a law enforcement officer. The holder of a confirmation of identification would have to ensure that the information provided remains accurate and is current prior to operating a foreign registered civil unmanned aircraft system in the United States.

Use: The FAA would use information provided by operators of foreign-registered civil unmanned aircraft operating in the airspace of the United States to identify those aircraft.

TABLE 12—NOTICE OF IDENTIFICATION

[Unit cost]

Year	Minutes to establish account [182]	Additional minutes per aircraft	Total minutes	Part 107 opportunity cost of time ($1.55/minute) [183]	Recreational flyer opportunity cost of time ($0.237/minute) [184]
1	5	1	6	$9.30/notification	$1.42/notification.
2	5	1	6	$9.30/notification	$1.42/notification.
3	5	1	6	$9.30/notification	$1.42/notification.

3. New Information Collection: Remote Identification Means of Compliance, Declaration of Compliance, and Labeling Requirements

i. Means of Compliance

The FAA is proposing to require persons who develop standards that the FAA may accept as means of compliance for the production of UAS with remote identification to submit those standards for review and acceptance by the FAA. The means of compliance would include requirements for producer demonstration of how the UAS with remote identification performs its intended functions and meets the performance requirements by analysis, ground test, or flight test, as appropriate. A person who submits a means of compliance that is accepted by the FAA would be required to retain the following data for as long as the means of compliance is accepted and an additional 24 calendar months: All documentation and substantiating data submitted for the acceptance of the means of compliance; records of all test procedures, methodology, and other procedures, if applicable; and any other information necessary to justify and substantiate how the means of compliance enables compliance with the remote identification requirements of part 89.

Use: The FAA would use the means of compliance as a way for persons responsible for the production of standard remote identification UAS or limited remote identification UAS to demonstrate compliance with the requirements for remote identification of UAS.

TABLE 14—MEANS OF COMPLIANCE HOURLY BURDEN AND COST

Year	MOC submitted	Total pages	Hrs per page	Total hours	Cost per hour	Total cost
1	1	12	1	12	$92.72	$1,112.64
2	1	12	1	12	92.72	1,112.64
3	1	12	1	12	92.72	1,112.64
Total	3	36	3	36		3,337.92

Row and column totals may not sum due to rounding.

ii. Declaration of Compliance

The FAA is proposing to require persons responsible for the production of UAS with remote identification to produce those UAS to meet the minimum performance requirements of the rule using an FAA-accepted means of compliance. To demonstrate that a UAS has been produced using an FAA-accepted means of compliance, producers would be required to submit

[182] *https://www.faa.gov/news/updates/media/2015-12-13_2120-AK82_RIA.pdf.* See Page 13 of the Regulatory Impact Analysis of the Interim Final Rule Regulatory Evaluation for the Registration and Marking Requirements for Small Unmanned Aircraft. RIN 2120–AK82.

[183] The FAA estimates the wage earned by Part 107 operators to be similar to that of a fully burdened wage (compensation + benefits) of an FAA technical subject matter expert, which is $92.72 per hour ($1.55 per minute).

[184] Department of Transportation Departmental Guidance on Valuation of Travel Time in Economic Analysis, September 27, 2016. Table 4 Recommended Hourly Values of Travel Time Savings, Page 17. In constant dollars, the hourly value of time for personal travel is $14.21 per hour ($.237 per minute). This value is used as a proxy for the value of time of someone operating UAS for recreational operations.

to the FAA a declaration of compliance containing:

- The name, physical address, telephone number, and email address of the person responsible for production of the standard remote identification UAS or limited remote identification UAS.
- The UAS make and model.
- The UAS serial number, or the range of serial numbers for which the person responsible for production is declaring compliance.
- The means of compliance used in the design and production of the UAS and whether the UAS is a standard remote identification UAS or a limited remote identification UAS.
- Whether the declaration of compliance is an initial declaration or an amended declaration, and if the declaration of compliance is an amended declaration, the reason for the amendment.
- A declaration that the person responsible for the production of the UAS:
  - Can demonstrate that the UAS was designed and produced to meet the minimum performance requirements of standard remote identification UAS or limited remote identification UAS by using an FAA-accepted means of compliance.
  - Will, upon request, allow the Administrator to inspect its facilities, technical data, and any UAS produced with remote identification, and to witness any tests necessary to determine compliance with part 89, subpart D.
  - Will perform independent audits on a recurring basis, and whenever the FAA provides notice of noncompliance or of potential noncompliance, to demonstrate compliance with the requirements of subpart F of part 89, and will provide the results of those audits to the FAA upon request.
  - Will maintain product support and notification procedures to notify the public and the FAA of any defect or condition that causes the UAS to no longer meet the requirements of subpart F of part 89, within 15 calendar days of the date the person becomes aware of the defect or condition.

A person who submits a declaration of compliance that is accepted by the FAA would be required to retain the following data for 24 calendar months after the cessation of production of the UAS with remote identification: The means of compliance, all documentation, and substantiating data related to the means of compliance used; records of all test results; and any other information necessary to demonstrate compliance with the means of compliance so that the UAS meets the remote identification requirements of part 89.

Use: The FAA would use the declaration of compliance to determine that the person responsible for the production of standard remote identification UAS or limited remote identification UAS has demonstrated compliance with the requirements for remote identification of UAS.

TABLE 13—DECLARATION OF COMPLIANCE HOURLY BURDEN AND COST

[$Mil.]

Year	DoC submitted	Pages per DoC	Hours per page	Hourly burden	Cost per hour	Total cost
1	.....	.....	.....	.....	.....	.....
2	1,155	50	1	57,750	$82.93	$4.79
3	19	50	1	945	82.93	0.08
Total	1,174	.....	.....	58,695	82.93	4.87

Row and column totals may not sum due to rounding.

iii. Labeling

For standard remote identification UAS and limited remote identification UAS, the proposed rule would require the person responsible for production of the UAS to label the unmanned aircraft to show that it was produced with remote identification technology that meets the requirements of the proposed rule and to indicate whether it is a standard remote identification UAS or a limited remote identification UAS. The label would be in English and be legible, prominent, and permanently affixed to the unmanned aircraft. The proposed labeling requirement would assist the operator to know that his or her UAS is eligible to conduct operations within the airspace of the United States.

Use: The proposed labeling requirement would assist the FAA and owners and operators of UAS to determine if the UAS meets the remote identification requirements of the proposed rule.

TABLE 14—LABELING REQUIREMENT HOURLY BURDEN AND COST

[$Mil.]

Year	Number of platforms	Hours per design	Hourly burden	Cost per hour	Total cost
1	.....	.....	.....	.....	.....
2	1,100	2	2,200	$82.93	$0.182
3	18	2	36	82.93	0.003
Total	1,118	.....	2,236	.....	0.185

Row and column totals may not sum due to rounding.

4. New Information Collection: UAS Remote Identification Message Elements

The FAA is proposing that standard remote identification UAS and limited remote identification UAS be designed and produced to connect to the internet and transmit remote identification message elements to Remote Identification UAS Service Suppliers (Remote ID USS). The collection of this information in the form of message elements is necessary to comply with

the statutory requirement to develop standards for remotely identifying operators and owners of UAS and associated unmanned aircraft. Furthermore, remote identification of UAS would provide airspace awareness to the FAA, national security agencies, and law enforcement entities, which could be used to distinguish compliant airspace users from those potentially posing a safety or security risk.

Under this proposed rule, no person would be able to operate a UAS required to have remote identification within the airspace of the United States unless the UAS is capable of connecting to the internet and transmitting certain remote identification message elements throughout the operation. Persons operating UAS would comply with remote identification in one of three ways. First, standard remote identification UAS would connect to the internet and transmit remote identification message elements through that internet connection to a Remote ID USS and broadcast those message elements directly from the unmanned aircraft. These message elements would include the UAS Identification (either the unmanned aircraft's serial number or session ID), latitude, longitude, and barometric pressure altitude of both the control station and the unmanned aircraft, a time mark, and an emergency status code that would transmit only when applicable. A standard remote identification UAS that could no longer broadcast the message elements would have to land as soon as practicable.

Second, limited remote identification UAS would be required to connect to the internet and transmit similar remote identification message elements through that internet connection to a Remote ID USS. If the connection to the internet were unavailable or if the UAS could no longer transmit remote identification message elements to a Remote ID USS, the unmanned aircraft would not be able to take off. Limited remote identification UAS would be designed and produced to operate no more than 400 feet from the control station, cannot broadcast remote identification message elements, and would have to be operated within visual line of sight.

The third way to comply with the UAS remote identification requirements would be to operate a UAS without remote identification at an FAA-Recognized Identification Area. Because these types of operations do not involve any information exchanges with a Remote ID USS, they were not considered as part of this information collection.

Use: The remote identification message elements would be sent from the UAS to the Remote ID USS over the internet. The Remote ID USS would, in turn, transmit the information collected to the FAA as required. To implement remote identification, the FAA anticipates establishing a cooperative data exchange mechanism between the FAA and Remote ID USS.

The information transmitted between the UAS and the Remote ID USS is collected electronically without input from the human operator, thus there is no burden on the person manipulating the flight controls of the UAS to submit information to the Remote ID USS. There would be an exchange of information between the Remote ID USS and the FAA when identification of the owner of the unmanned aircraft or the location of the UAS is required. At this time, it is unknown how often exchanges between the FAA and Remote ID USS would occur. The following table shows the number of estimated respondents that would transmit messages through the internet to a Remote ID USS and the number of Remote ID USS that would exchange data with the FAA.

TABLE 15—TRANSMIT USS MESSAGE ELEMENTS

Year	Remote ID respondents	Remote ID USS respondents
1		
2	422,498	10
3	972,258	11
Total	1,394,756	26

5. New Information Collection: Application for FAA-Recognized Identification Areas

The FAA is proposing that community-based organization (CBO) representatives submitting applications for flying sites to become FAA-recognized identification areas may apply for such establishment in a form and manner acceptable to the FAA. The application would collect certain information regarding the location of the flying site, and require the CBO representative to confirm certain information regarding the site.

An applicant for an FAA-recognized identification area would be required to submit: (1) The name of the CBO making the request; (2) a declaration that the person making the request has the authority to act on behalf of the CBO; (3) the name and contact information, including telephone number, of the primary point of contact for communications with the FAA; (4) the physical address of the proposed FAA-recognized identification area; (5) the latitude and longitude coordinates delineating the geographic boundaries of the proposed FAA-recognized identification area, and (6) if applicable, a copy of any existing letter of agreement regarding the flying site.

Use: Applications would permit CBOs recognized by the Administrator to apply for FAA-recognized identification area status.

TABLE 16—CBO REQUEST FOR FAA-RECOGNIZED IDENTIFICATION AREA HOURLY BURDEN AND COST

[$Mil]

Year	Requests submitted	Pages per request	Total pages	Hours per page	Total hours	Hourly burden	Total cost
1	2,500	4	10,000	0.5	5000	$58.12	$0.29
2							
3							
Total	2,500		10,000		5,000		0.29

Row and column totals may not sum due to rounding.

6. Requirements for Which Information Collections Are Not Proposed

i. Existing Information Collection 2120–0042: Aircraft Registration

While the FAA is proposing to clarify in new § 47.14 that all unmanned aircraft registering under part 47 must include a serial number as part of the registration, the FAA is not proposing to revise existing information collection 2120–0042, Aircraft Registration. The inclusion of a serial number in registrations under part 47 has always been required and a revision to this information collection is not necessary.

ii. Existing Information Collection 2120–0021: Certification: Pilots and Flight Instructors

While the FAA is proposing to require that new questions regarding remote identification of UAS be included on the initial and recurrent aeronautical knowledge tests described in § 107.73, and that new training be included in the initial and recurrent training described in § 107.74, for persons seeking a remote pilot certificate with a small UAS rating, the FAA does not believe that the addition of these questions would necessitate further time on the part of applicants to complete the test or training. Therefore, the FAA is not proposing to revise existing information collection 2120–0021, Certification: Pilots and Flight Instructors.

iii. Remote ID USS

While the FAA envisions the use of Remote ID USS for the transmission of UAS remote identification information, the FAA is still developing the concepts and requirements for those USS. Because the FAA is uncertain at this time regarding the requirements for application by persons to be Remote ID USS, the FAA is not proposing here to establish an information collection for Remote ID USS.

Individuals and organizations may send comments on the information collection requirement to the address listed in the **ADDRESSES** section at the beginning of this preamble by March 2, 2020. Comments may also be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for FAA, New Executive Office Building, Room 10202, 725 17th Street NW, Washington, DC 20053.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations. Additionally, the FAA regularly reaches out to its international partners on a bilateral and multilateral basis to harmonize regulations to the maximum extent possible. The FAA's international outreach efforts include the following:

- Discussions with the Switzerland Federal Office of Civil Aviation (FOCA) regarding plans for use of remote identification to facilitate U-Space [185] operations and plans to allow multiple UAS Service Suppliers to serve a range of U-Space operators in concept similar to current and future FAA USS plans;
- Collaboration with the European Aviation Safety Agency (EASA) on the EASA U-Space Regulatory Framework;
- Cooperation in the Joint Authorities for Rulemaking on Unmanned Systems (JARUS) on UTM/U-Space and other regulatory recommendations under development;
- Collaboration with the Transport Canada Civil Aviation (TCCA) Remotely Piloted Aircraft Systems (RPAS) Task Force on policy, rulemaking, regulatory, and research and development topics related to UAS and beyond visual line of sight operations;
- Hosting the Sharing Best Practices for Managing Unmanned Aircraft Systems (UAS) With Association of Southeast Asian Nations (ASEAN) Member States workshop in Singapore; and
- Meetings with the Australia Civil Aviation Safety Authority (CASA) to share best practices and lessons learned on UAS integration.

In addition, the FAA has assessed the European Commission regulations for UAS remote identification and compared them to the requirements in this proposal. One difference between the two is that the European Commission regulations require only a remote identification broadcast, whereas the FAA's proposal includes both a broadcast and a requirement that the same information be transmitted through an internet connection to a third-party service supplier. Another difference is that the European regulation requires the broadcast of both the unmanned aircraft registration number and the serial number, whereas the FAA's proposal uses the unmanned aircraft serial number or session ID as the unique identifier in the remote identification message set. Other differences include that the European regulation requires message elements for the route course and speed of the unmanned aircraft, while the FAA's proposal does not and the FAA proposal includes remote identification message elements for emergency status and a time mark, but the European regulation does not. At the same time, there are similarities. The European regulation and the FAA's proposal both include the position of the unmanned aircraft and the control station as remote identification message elements.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an Environmental Assessment or Environmental Impact Statement under the National Environmental Policy Act (NEPA) in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5–6.6f of this order and involves no extraordinary circumstances.

This rulemaking action provides a framework for the remote identification of all UAS operating in the airspace of the United States. It does not affect the frequency of UAS operations in the airspace of the United States. The FAA has reviewed the implementation of the rulemaking action and determined it is categorically excluded from further environmental review. Possible extraordinary circumstances that would preclude the use of a categorical exclusion have been examined and the FAA has determined that no such circumstances exist. After careful and thorough consideration of the rulemaking action, the FAA finds that it does not require preparation of an Environmental Assessment or Environmental Impact Statement in accordance with the requirements of NEPA, Council on Environmental Quality (CEQ) regulations, and FAA Order 1050.1F.

XX. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action would not have a substantial direct effect on the States, or the relationship

[185] As described by the Single European Sky ATM Research (SESAR) Joint Undertaking, ''U-space is a set of new services relying on a high level of digitalization and automation of functions and specific procedures designed to support safe, efficient and secure access to airspace for large numbers of drones.'' *https://www.sesarju.eu/U-space.*

between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have Federalism implications.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it would not be a ''significant energy action'' under the executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, Promoting International Regulatory Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, (77 FR 26413, May 4, 2012) promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

For significant regulations that the agency identifies as having significant international impacts, the FAA has to consider, to the extent feasible, appropriate, and consistent with law, any regulatory approaches by a foreign government that the United States has agreed to consider under a regulatory cooperation council work plan. A significant regulatory action under Executive Order 13609 has the same meaning as in section 3(f) of Executive Order 12866. An international impact, as defined in Executive Order 13609, means ''a direct effect that a proposed or final regulation is expected to have on international trade and investment, or that otherwise may be of significant interest to the trading partners of the United States.''

As discussed in the International Compatibility and Cooperation section of this proposed rule, in keeping with U.S. obligations under the Convention on International Civil Aviation, the FAA seeks to conform to International Civil Aviation Organization Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations. Additionally, the FAA regularly reaches out to its international partners on a bi-lateral and multi-lateral basis to harmonize regulations to the maximum extent possible. Thus, the FAA believes that the proposed rule should have no effect on international regulatory cooperation.

XXI. Tribal Considerations

Consistent with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments,[186] and FAA Order 1210.20, American Indian and Alaska Native Tribal Consultation Policy and Procedures,[187] the FAA ensures that Federally Recognized Tribes (Tribes) are given the opportunity to provide meaningful and timely input regarding proposed Federal actions that have the potential to affect uniquely or significantly their respective Tribes. At this point, the FAA has not identified any unique or significant effects, environmental or otherwise, on tribes resulting from this proposed rule.

XXII. Privacy

With regard to the information manufacturers and operators may submit in accordance with this proposed rule's requirements, the FAA conducted a privacy impact assessment (PIA) under section 522(a)(5) of division H of the FY 2005 Omnibus Appropriations Act, Public Law 108–447, 118 Stat. 3268 (Dec. 8, 2004) and section 208 of the E-Government Act of 2002, Public Law 107–347, 116 Stat. 2889 (Dec. 17, 2002). The PIA found the NPRM requirements that affect privacy include: the registration of the UAS with the FAA, the transmission of data from the UAS to Remote ID USS, the broadcast of data from standard remote identification UAS to any person capable of receiving broadcasts, the use of PII in the manufacturer's declaration of compliance, and the use of PII in applications to establish FAA-recognized identification areas for UAS flying.

The PIA points to several mitigation strategies including: limiting collection to only relevant and necessary PII, limiting the use of PII to the specific purpose for which it was collected, using security measures to protect PII collected, notifying individuals of collection practices prior to collection, and the voluntary nature of all PII submitted. Additionally, the FAA would enter into contractual agreements with the Remote ID USS including directions for the use, protection, and storage of the data. Section XIV discusses the data security requirements the FAA intends to impose upon FAA-qualified Remote ID USS. Although the message elements themselves would be publicly accessible information, the ability to cross-reference that information with registry data would not be publicly available and would be limited to the FAA and law enforcement for security purposes.

In the 2016 Rule, the FAA acknowledged various organizations' and commenters' concerns regarding the use of small UAS to collect information about individuals. In that rule, the FAA noted that privacy concerns were beyond the scope of the FAA's mission to ensure safety and efficiency of aviation operations in the airspace of the United States, but discussed various methods by which the FAA intended to continue addressing privacy concerns through engagement and collaboration with the public, stakeholders, and other agencies with authority and subject matter expertise in privacy law and policy.

As part of the PIA, the FAA analyzed the effect the proposed rule might have on collecting, storing, and disseminating personally identifiable information (PII) of manufacturers and UAS operators. The FAA also examined and evaluated protections and alternative information-handling processes in developing the proposed rule to mitigate potential privacy risks. A copy of the draft PIA is posted in the docket for this rulemaking.[188]

XXIII. Additional Information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives. Before acting on this proposal, the FAA will consider all

[186] 65 FR 67249 (Nov. 6, 2000).

[187] FAA Order No. 1210.20 (Jan. 28, 2004), available at *http://www.faa.gov/documentLibrary/media/1210.pdf.*

[188] Upon finalization, PIAs are posted on the Department of Transportation's Privacy Program page, available at *https://www.transportation.gov/individuals/privacy/privacy-impact-assessments#Federal%20Aviation%20Administration%20(FAA).*

comments it receives on or before the closing date for comments. The agency may change this proposal in light of the comments it receives.

B. Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to the person in the **FOR FURTHER INFORMATION CONTACT** section of this document. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

C. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the internet by:

- Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);
- Visiting the FAA's Regulations and Policies at *https://www.faa.gov/regulations_policies;* or
- Accessing the Government Publishing Office at *https://www.govinfo.gov.*

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9677. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed from the internet through the Federal eRulemaking Portal referenced above.

D. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the internet, visit *https://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects

14 CFR Part 1

Air transportation.

14 CFR Part 47

Aircraft, Reporting and recordkeeping requirements.

14 CFR Part 48

Aircraft, Reporting and recordkeeping requirements.

14 CFR Part 89

Aircraft, Airmen, Air traffic control, Aviation safety, Incorporation by reference, Reporting and recordkeeping requirements, Security measures.

14 CFR Part 91

Air traffic control, Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements, Security measures.

14 CFR Part 107

Aircraft, Airmen, Aviation safety, Security measures.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend chapter I of title 14, Code of Federal Regulations as follows:

PART 1—DEFINITIONS AND ABBREVIATIONS

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

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

■ 2. In § 1.1, add the terms ''unmanned aircraft system,'' ''unmanned aircraft system service supplier'' and ''visual line of sight'' in alphabetical order to read as follows:

§ 1.1 General definitions.

* * * * *

Unmanned aircraft system means an unmanned aircraft and its associated elements (including communication links and the components that control the unmanned aircraft) that are required for the safe and efficient operation of the unmanned aircraft in the airspace of the United States.

Unmanned aircraft system service supplier means a person qualified by the Administrator to provide aviation-related services to unmanned aircraft systems.

* * * * *

Visual line of sight means the ability of a person manipulating the flight controls of the unmanned aircraft or a visual observer (if one is used) to see the unmanned aircraft throughout the entire flight with vision that is unaided by any device other than corrective lenses.

* * * * *

■ 3. In § 1.2, add the abbreviation ''USS'' in alphabetical order to read as follows:

§ 1.2 Abbreviations and symbols.

* * * * *

USS means an unmanned aircraft system service supplier.

* * * * *

PART 47—AIRCRAFT REGISTRATION

■ 4. The authority citation for part 47 is revised to read as follows:

Authority: 4 U.S.T. 1830; Public Law 108–297, 118 Stat. 1095 (49 U.S.C. 40101 note, 49 U.S.C. 44101 note); 49 U.S.C. 106(f), 106(g), 40113–40114, 44101–44108, 44110–44113, 44703–44704, 44713, 44809(f), 45302, 45305, 46104, 46301.

■ 5. Add § 47.14 to read as follows:

§ 47.14 Serial numbers for unmanned aircraft.

The unmanned aircraft serial number provided as part of any application for aircraft registration of a standard remote identification unmanned aircraft or a limited remote identification unmanned aircraft must be the serial number issued by the manufacturer of the unmanned aircraft in accordance with the design and production requirements of part 89.

PART 48—REGISTRATION AND MARKING REQUIREMENTS FOR SMALL UNMANNED AIRCRAFT

■ 6. The authority citation for part 48 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40101, 40103, 40113–40114, 41703, 44101–44103, 44105–44106, 44110–44113, 44809(f), 45302, 45305, 46104, 46301, 46306.

■ 7. Revise § 48.5 to read as follows:

§ 48.5 Compliance dates.

(a) Except as provided in paragraph (b) or (c) of this section, compliance with the requirements of this part or part 47 of this chapter is required prior to operation of the small unmanned aircraft.

(b) For small unmanned aircraft registered prior to [EFFECTIVE DATE

OF FINAL RULE], compliance with the requirements of this part or part 47 of this chapter is required no later than [COMPLIANCE DATE 36 MONTHS FROM EFFECTIVE DATE OF FINAL RULE] or upon renewal of the registration, whichever is sooner.

(c) For small unmanned aircraft registered exclusively as model aircraft prior to [EFFECTIVE DATE OF THE FINAL RULE], compliance with the requirements of this part or part 47 of this chapter is required no later than [COMPLIANCE DATE 36 MONTHS FROM THE EFFECTIVE DATE OF THE FINAL RULE] or upon renewal of the registration, whichever is sooner.

■ 8. In § 48.15, revise paragraph (b) to read as follows:

§ 48.15 Requirement to register.

* * * * *

(b) The aircraft is used exclusively for limited recreational operations and weighs 0.55 pounds or less on takeoff, including everything that is on board or otherwise attached to the aircraft; or

* * * * *

■ 9. Revise § 48.30 to read as follows

§ 48.30 Fees.

The fee for issuing or renewing a Certificate of Aircraft Registration for aircraft registered in accordance with § 48.100 is $5.00 per aircraft. Each application for and renewal of a Certificate of Aircraft Registration must be accompanied by the fee, paid to the Federal Aviation Administration through the web-based small unmanned aircraft registration system, or in another manner if prescribed by the Administrator.

■ 10. Revise § 48.100 to read as follows:

§ 48.100 Application.

(a) *Required information.* Each applicant for a Certificate of Aircraft Registration issued under this part must submit all of the following information to the Registry:

(1) Applicant name and, for an applicant other than an individual, the name of the authorized representative applying for a Certificate of Aircraft Registration.

(2) Applicant's physical address and, for an applicant other than an individual, the physical address for the authorized representative. If the applicant or authorized representative does not receive mail at their physical address, a mailing address must also be provided.

(3) Applicant's email address or, for applicants other than individuals, the email address of the authorized representative.

(4) Applicant's telephone number(s).

(5) The aircraft manufacturer and model name.

(6) For any standard remote identification unmanned aircraft or limited remote identification unmanned aircraft, the serial number issued by the manufacturer of the unmanned aircraft in accordance with the design and production requirements of part 89.

(7) Other information as required by the Administrator.

(b) *Provision of information.* The information identified in paragraph (a) of this section must be submitted to the Registry through the web-based small unmanned aircraft registration system in a form and manner prescribed by the Administrator.

(c) *Issuance of Certificate of Aircraft Registration.* The FAA will issue a Certificate of Aircraft Registration upon completion of the application requirements provided in paragraph (a) of this section.

■ 11. In § 48.110, revise the section heading and paragraph (a) to read as follows:

§ 48.110 Aircraft Registration.

(a) *Certificate of Aircraft Registration.* A Certificate of Aircraft Registration issued in accordance with § 48.100 constitutes registration only for the small unmanned aircraft identified on the application.

* * * * *

§ 48.115 [Reserved]

■ 12. Remove and reserve § 48.115.

■ 13. Amend § 48.200 by revising paragraphs (b)(1) and (2) to read as follows:

§ 48.200 General.

* * * * *

(b) * * *

(1) The registration number issued by the Administrator upon completion of the registration process provided by this part; or

(2) If authorized by the Administrator, the small unmanned aircraft serial number provided with the application for Certificate of Aircraft Registration under § 48.100.

■ 14. Add part 89 to subchapter F to read as follows:

PART 89—REMOTE IDENTIFICATION OF UNMANNED AIRCRAFT SYSTEMS

Subpart A—General

Sec.
89.1 Definitions.
89.5 Falsification, reproduction, alteration, or omission.

Subpart B—Operating Requirements

89.101 Applicability.
89.105 Remote identification requirement.
89.110 Standard remote identification unmanned aircraft systems.
89.115 Limited remote identification unmanned aircraft systems.
89.120 Unmanned aircraft systems without remote identification.
89.125 Automatic Dependent Surveillance-Broadcast (ADS–B) Out prohibition.
89.130 Confirmation of identification.
89.135 Record retention.

Subpart C—FAA-Recognized Identification Areas

89.201 Applicability.
89.205 Eligibility.
89.210 Requests for establishment of an FAA-recognized identification area.
89.215 Approval of FAA-recognized identification areas.
89.220 Amendment.
89.225 Duration of an FAA-recognized identification area.
89.230 Expiration and termination.

Subpart D—Requirements for Unmanned Aircraft Systems with Remote Identification

89.301 Applicability.
89.305 Minimum message elements broadcast and transmitted by standard remote identification unmanned aircraft systems.
89.310 Minimum performance requirements for standard remote identification unmanned aircraft systems.
89.315 Minimum message elements transmitted by limited remote identification unmanned aircraft systems.
89.320 Minimum performance requirements for limited remote identification unmanned aircraft systems.

Subpart E—Means of Compliance

89.401 Applicability.
89.405 Submission of a means of compliance for FAA acceptance.
89.410 Acceptance of a means of compliance.
89.415 Rescission.
89.420 Record retention.

Subpart F—Design and Production of Unmanned Aircraft Systems With Remote Identification

89.501 Applicability.
89.505 Serial numbers.
89.510 Production requirements.
89.515 Labeling.
89.520 Submission of a declaration of compliance for FAA acceptance.
89.525 Acceptance of a declaration of compliance.
89.530 Rescission and reconsideration.
89.535 Record retention.

Authority: 49 U.S.C. 106(f), 106(g), 40101(d), 40103(b), 44701, 44805, 44809(f), Section 2202 of Pub. L. 114–190.

Subpart A—General

§ 89.1 Definitions.

The following definitions apply to this part. If there is a conflict between the definitions of this part and the

definitions specified in § 1.1 of this chapter, the definitions in this part control for purposes of this part:

Amateur-built unmanned aircraft system means an unmanned aircraft system the major portion of which has been fabricated and assembled by a person who undertook the construction project solely for their own education or recreation.

Broadcast means to send information from an unmanned aircraft using radio frequency spectrum.

Remote ID USS means a USS qualified by the Administrator to provide remote identification services.

§ 89.5 Falsification, reproduction, alteration, or omission.

(a) No person may make or cause to be made:

(1) Any fraudulent or intentionally false statement in any document related to any acceptance, application, approval, authorization, certificate, declaration, designation, qualification, record, report, request for reconsideration, or similar, submitted under this part.

(2) Any fraudulent or intentionally false statement in any document required to be developed, provided, kept, or used to show compliance with any requirement under this part.

(3) Any reproduction or alteration, for fraudulent purpose, of any document related to any acceptance, application, approval, authorization, certificate, declaration, designation, qualification, record, report, request for reconsideration, or similar, submitted or granted under this part.

(b) No person may, by omission, knowingly conceal or cause to be concealed, a material fact in:

(1) Any document related to any acceptance, application, approval, authorization, certificate, declaration, designation, qualification, record, report, request for reconsideration, or similar, submitted under this part.

(2) Any document required to be developed, provided, kept, or used to show compliance with any requirement under this part.

(c) The commission by any person of an act prohibited under paragraphs (a) or (b) of this section is a basis for:

(1) Denial, suspension, rescission, or revocation of any acceptance, application, approval, authorization, certificate, declaration, declaration of compliance, designation, document, filing, qualification, means of compliance, record, report, request for reconsideration, or similar instrument issued or granted by the Administrator and held by that person; or

(2) A civil penalty.

Subpart B—Operating Requirements

§ 89.101 Applicability.

This subpart applies to the following:

(a) Persons operating unmanned aircraft registered or required to be registered under part 47 or part 48 of this chapter.

(b) Persons operating foreign civil unmanned aircraft in the United States.

§ 89.105 Remote identification requirement.

Except as otherwise authorized by the Administrator, after [COMPLIANCE DATE 36 MONTHS FROM EFFECTIVE DATE OF FINAL RULE], no person may operate an unmanned aircraft system within the airspace of the United States unless the operation is conducted under one of the following conditions:

(a) The unmanned aircraft system is a standard remote identification unmanned aircraft system and that person complies with the requirements of § 89.110.

(b) The unmanned aircraft system is a limited remote identification unmanned aircraft system and that person complies with the requirements of § 89.115.

(c) The unmanned aircraft system does not have remote identification equipment and that person complies with the requirements of § 89.120.

§ 89.110 Standard remote identification unmanned aircraft systems.

A person operating a standard remote identification unmanned aircraft system is responsible for complying with this section.

(a) *Remote identification.* Unless otherwise authorized by the Administrator, a person may operate a standard remote identification unmanned aircraft system only if the unmanned aircraft system sends the remote identification message elements of § 89.305, from takeoff to landing, in one of the following ways:

(1) If the internet is available at takeoff, a standard remote identification unmanned aircraft system must:

(i) Connect to the internet and transmit the message elements through that internet connection to a Remote ID USS; and

(ii) Broadcast the message elements directly from the unmanned aircraft.

(2) If the internet is unavailable at takeoff, or if during the flight, the unmanned aircraft system can no longer transmit through an internet connection to a Remote ID USS, the standard remote identification unmanned aircraft system must broadcast the message elements directly from the unmanned aircraft.

(b) *In-flight loss of broadcast capability.* Unless otherwise authorized by the Administrator, the person manipulating the flight controls of the aircraft must land as soon as practicable if a standard remote identification unmanned aircraft system can no longer broadcast the message elements of § 89.305.

(c) *Operation of standard remote identification unmanned aircraft systems.* Unless otherwise authorized by the Administrator, a person may operate a standard remote identification unmanned aircraft system only if it meets the following requirements:

(1) Its serial number is listed on an FAA-accepted declaration of compliance.

(2) Its remote identification equipment is functional and complies with the requirements of this part from takeoff to landing.

(3) Its remote identification equipment and functionality have not been disabled.

§ 89.115 Limited remote identification unmanned aircraft systems.

A person operating a limited remote identification unmanned aircraft system is responsible for complying with this section.

(a) *Remote identification.* Unless otherwise authorized by the Administrator, a person may operate a limited remote identification unmanned aircraft system only if, from takeoff to landing:

(1) The unmanned aircraft system connects to the internet and transmits the remote identification message elements of § 89.315 through that internet connection to a Remote ID USS.

(2) The unmanned aircraft system is operated within visual line of sight.

(b) *In-flight loss of remote identification.* Unless otherwise authorized by the Administrator, the person manipulating the flight controls of the unmanned aircraft must land as soon as practicable if a limited remote identification unmanned aircraft system in-flight can no longer transmit the message elements of § 89.315 to a Remote ID USS.

(c) *Operation of limited remote identification unmanned aircraft systems.* Unless otherwise authorized by the Administrator, a person may operate a limited remote identification unmanned aircraft system only if it meets the following requirements:

(1) Its serial number is listed on an FAA-accepted declaration of compliance.

(2) Its remote identification equipment is functional and complies with the requirements of this part from takeoff to landing.

(3) Its remote identification equipment and functionality have not been disabled.

§ 89.120 Unmanned aircraft systems without remote identification.

A person may operate an unmanned aircraft system that does not meet the requirements for a standard remote identification unmanned aircraft system under § 89.110 or a limited remote identification unmanned aircraft system under § 89.115 only if the requirements of (a) or (b) are met.

(a) *Operations at FAA-recognized identification areas.* Unless otherwise authorized by the administrator:

(1) The unmanned aircraft system is operated within visual line of sight.

(2) The unmanned aircraft system is operated within an FAA-recognized identification area.

(b) *Operations for aeronautical research.* The person is authorized by the administrator to operate the unmanned aircraft system without remote identification for the purpose of aeronautical research or to show compliance with regulations.

§ 89.125 Automatic Dependent Surveillance-Broadcast (ADS–B) Out prohibition.

Automatic Dependent Surveillance-Broadcast (ADS–B) Out equipment required under subpart C of part 91 of this chapter may not be used to comply with the remote identification requirements of this part.

§ 89.130 Confirmation of identification.

(a) *Notification requirement.* No person may operate a foreign registered civil unmanned aircraft in the United States unless, prior to the operation, the person submits a notice of identification in a form and manner acceptable to the Administrator. The notice of identification must include:

(1) The name of the operator and, for an operator other than an individual, the name of the authorized representative providing the notification.

(2) The physical address of the operator and, for an operator other than an individual, the physical address for the authorized representative. If the operator or authorized representative does not receive mail at the physical address, a mailing address must also be provided.

(3) The physical address of the operator in the United States.

(4) The telephone number(s) where the operator can be reached while in the United States.

(5) The email address of the operator or, for an operator other than an individual, the email address of the authorized representative.

(6) The aircraft manufacturer and model name.

(7) The serial number of the aircraft.

(8) The country of registration of the aircraft.

(9) The registration number of the aircraft.

(b) *Issuance of a Confirmation of Identification.*

(1) The FAA will issue a Confirmation of Identification upon completion of the notification requirements provided in paragraph (a) of this section.

(2) The filing of a notification under paragraph (a) of this section and the Confirmation of Identification issued under paragraph (b)(1) of this section do not have the effect of U.S. aircraft registration.

(c) *Proof of notification.* No person may operate a foreign registered civil unmanned aircraft in the United States unless the person obtains a Confirmation of Identification under paragraph (b)(1) of this section, maintains such Confirmation of Identification at the unmanned aircraft system's control station, and produces the Confirmation of Identification when requested by the FAA or a law enforcement officer.

(d) *Requirement to maintain current information.* The holder of a Confirmation of Identification must ensure that the information provided under § 89.130(a) remains accurate and must update the information prior to operating a foreign registered civil unmanned aircraft system in the United States.

§ 89.135 Record retention.

The Administrator shall require any Remote ID USS to retain any remote identification message elements listed in § 89.305 or § 89.315 obtained in the course of offering services to persons operating under this subpart for 6 months from the date when the remote identification message elements are received or otherwise come into the possession of the Remote ID USS.

Subpart C—FAA-Recognized Identification Areas

§ 89.201 Applicability.

This subpart prescribes procedural requirements to establish an FAA-recognized identification area.

§ 89.205 Eligibility.

Only a community based organization recognized by the Administrator may apply for the establishment of an FAA-recognized identification area under this subpart.

§ 89.210 Requests for establishment of an FAA-recognized identification area.

(a) *Application.* A community based organization requesting the establishment of an FAA-recognized identification area under this subpart must submit an application in a form and manner acceptable to the Administrator within 12 calendar months from [EFFECTIVE DATE OF FINAL RULE].

(b) *Required documentation.* A request under this subpart must contain the following information:

(1) The name of the community based organization making the request.

(2) A declaration that the person making the request has the authority to act on behalf of the community based organization.

(3) The name and contact information, including telephone number(s), of the primary point of contact for communications with the FAA.

(4) The physical address of the proposed FAA-recognized identification area.

(5) The latitude and longitude coordinates delineating the geographic boundaries of the proposed FAA-recognized identification area.

(6) If applicable, a copy of any existing letter of agreement regarding the flying site.

§ 89.215 Approval of FAA-recognized identification areas.

The Administrator will assess applications for FAA-recognized identification areas and may require additional information or documentation, as needed, to supplement an application. The Administrator will approve or deny an application, and may take into consideration matters such as, but not limited to:

(a) The effects on existing or contemplated airspace capacity.

(b) The effect on critical infrastructure, existing or proposed manmade objects, natural objects, or the existing use of the land, within or close to the proposed FAA-recognized identification area.

(c) The safe and efficient use of airspace by other aircraft.

(d) The safety and security of persons or property on the ground.

§ 89.220 Amendment.

(a) From the time of application until expiration or termination of an FAA-recognized identification area, any change to the information submitted in the application including but not limited to a change to the point of contact for the FAA-recognized identification area or a change to the

community based organization's affiliation with the FAA-recognized identification area must be submitted to the FAA within 10 calendar days of the change.

(b) If the community based organization wishes to change the geographic boundaries of the FAA-recognized identification area, the organization must submit the request to the FAA for review. The geographic boundaries of the FAA-recognized identification area will not change until they have been approved or denied in accordance with § 89.215.

(c) The establishment of an FAA-recognized identification area is subject to ongoing review by the Administrator. All changes to the information submitted in the application may be reviewed in accordance with § 89.215 and may result in the termination of the FAA-recognized identification area pursuant to § 89.230.

§ 89.225 Duration of an FAA-recognized identification area.

(a) *Duration.* An FAA-recognized identification area will be in effect for 48 calendar months after the date the FAA approves the request for establishment of an FAA-recognized identification area.

(b) *Renewal.* A person wishing to renew an FAA-recognized identification area must submit a request for renewal no later than 120 days prior to the expiration of the FAA-recognized identification area in a form and manner acceptable to the Administrator. The Administrator may deny requests submitted after that deadline or requests submitted after the expiration.

§ 89.230 Expiration and termination.

(a) *Expiration.* Unless renewed, an FAA-recognized identification area issued under this subpart will be automatically cancelled and will have no further force or effect as of the day immediately after its expiration date.

(b) *Termination prior to expiration*—(1) *Termination by request.* A community based organization may submit a request to the Administrator to terminate an FAA-recognized identification area issued under this subpart. Once an FAA-recognized identification area is terminated, that community based organization may not reapply to have that flying site reestablished as an FAA-recognized identification area, and neither may any other person apply to have that site reestablished as an FAA-recognized identification area.

(2) *Termination by FAA.* The FAA may terminate an FAA-recognized identification area for cause or upon a finding that the FAA-recognized identification area may pose a risk to aviation safety, public safety, or national security, a finding that the FAA-recognized identification area is no longer associated with a community based organization recognized by the Administrator, or a finding that the person who submitted a request for establishment of an FAA-recognized identification area provided false or misleading information during the submission, amendment, or renewal process. The Administrator will notify the primary point of contact of the decision to terminate the FAA-recognized identification area and the reasons for the termination. Except as provided in paragraph (c) of this section, once an FAA-recognized identification area is terminated, a community based organization may not apply to have that flying site established as an FAA-recognized identification area.

(c) *Petition to reconsider the FAA's decision to terminate an FAA-recognized identification area.* Within 30 calendar days of a termination under this section, the Administrator may be petitioned to reconsider the decision. That petition must state the reasons justifying the reconsideration and include any supporting documentation. Upon consideration of the information submitted by the petitioner, the Administrator will notify the petitioner of the decision.

(d) *Inapplicability of part 13, subpart D, of this chapter.* Part 13, subpart D, of this chapter does not apply to the procedures of paragraphs (b) and (c) of this section.

Subpart D—Requirements for Unmanned Aircraft Systems With Remote Identification

§ 89.301 Applicability.

This subpart prescribes the minimum message element set and minimum performance requirements for standard remote identification unmanned aircraft systems and limited remote identification unmanned aircraft systems.

§ 89.305 Minimum message elements broadcast and transmitted by standard remote identification unmanned aircraft systems.

A standard remote identification unmanned aircraft system must transmit the following remote identification message elements through an internet connection to a Remote ID USS and must broadcast the following remote identification message elements:

(a) The identity of the unmanned aircraft system consisting of:

(1) A serial number assigned to the unmanned aircraft by the person responsible for the production of the standard remote identification unmanned aircraft system; or

(2) A session ID assigned by a Remote ID USS.

(b) An indication of the latitude and longitude of the control station.

(c) An indication of the barometric pressure altitude of the control station.

(d) An indication of the latitude and longitude of the unmanned aircraft.

(e) An indication of the barometric pressure altitude of the unmanned aircraft.

(f) A time mark identifying the Coordinated Universal Time (UTC) time of applicability of a position source output.

(g) An indication of the emergency status of the unmanned aircraft system.

§ 89.310 Minimum performance requirements for standard remote identification unmanned aircraft systems.

A standard remote identification unmanned aircraft system must meet the following minimum performance requirements:

(a) *Control station location.* The location of the control station of the unmanned aircraft system must be generated and encoded into the message elements and must correspond to the location of the person manipulating the flight controls of the unmanned aircraft system.

(b) *Automatic Remote ID USS connection.* From takeoff to landing, the unmanned aircraft system must automatically maintain a connection to the internet and transmit the message elements through that internet connection to a Remote ID USS when the internet is available.

(c) *Time mark.* The time mark message element must be synchronized with all other remote identification message elements.

(d) *Self-Testing and monitoring.* (1) When the unmanned aircraft system is powered on, it must automatically test the remote identification functionality and notify the person manipulating the flight controls of the unmanned aircraft system of the result of the test.

(2) The unmanned aircraft must not be able to take off if the remote identification equipment is not functional.

(3) The unmanned aircraft system must continuously monitor the remote identification functionality from takeoff to landing and must provide notification of malfunction or failure to the person manipulating the flight controls of the unmanned aircraft system.

(e) *Tamper resistance.* The unmanned aircraft system must be designed and

produced in a way that reduces the ability of a person to tamper with the remote identification functionality.

(f) *Connectivity.* (1) If the internet is available at takeoff, the unmanned aircraft must not be able to take off unless it is:

(i) Connected to the internet and transmitting the message elements in § 89.305 through that internet connection to a Remote ID USS; and

(ii) Broadcasting the message elements in § 89.305 directly from the unmanned aircraft.

(2) If the internet is unavailable at takeoff, the unmanned aircraft must not be able to take off unless it is broadcasting the message elements in § 89.305.

(3) The unmanned aircraft system must continuously monitor its connection to the internet and the unmanned aircraft system's transmission of the remote identification message elements through that internet connection to a Remote ID USS. If the connection to the internet is lost or the unmanned aircraft system is no longer transmitting the remote identification message elements to a Remote ID USS, the unmanned aircraft system must notify the person manipulating the flight controls of the unmanned aircraft system.

(g) *Error correction.* The remote identification equipment must incorporate error correction in the transmission or broadcast of the message elements in § 89.305.

(h) *Interference considerations.* The remote identification equipment must not interfere with other systems or equipment installed on the unmanned aircraft system, and other systems or equipment installed on the unmanned aircraft system must not interfere with the remote identification equipment.

(i) *Message transmission.* (1) The unmanned aircraft system must be capable of transmitting the message elements for standard remote identification unmanned aircraft systems in § 89.305 through an internet connection to a Remote ID USS.

(2) The unmanned aircraft must be capable of broadcasting the message elements in § 89.305 using a non-proprietary broadcast specification and using radio frequency spectrum in accordance with part 15 of title 47, Code of Federal Regulations, where operations may occur without an FCC individual license that is compatible with personal wireless devices. Any broadcasting device used to meet the requirements of this section must be integrated into the unmanned aircraft without modification to its authorized radio frequency parameters and designed to maximize the range at which the broadcast can be received, while complying with 47 CFR part 15 and any other laws in effect as of the date the declaration of compliance is submitted to the FAA for acceptance.

(j) *Message elements performance requirements.* (1) The message elements in § 89.305 transmitted through an internet connection to a Remote ID USS from the unmanned aircraft system and broadcast from the unmanned aircraft must be identical.

(2) The reported position of the unmanned aircraft and the control station must be accurate to within 100 feet of the true position, with 95 percent probability.

(3) The reported barometric pressure altitude of the unmanned aircraft and control station must be accurate to within 20 feet of the true barometric pressure altitude for pressure altitudes ranging from 0 to 10,000 feet.

(4) The unmanned aircraft system must transmit through an internet connection to a Remote ID USS and broadcast the latitude, longitude, and barometric pressure altitude of the unmanned aircraft and its control station no later than 1.0 second from the time of measurement to the time of transmission and broadcast.

(5) The unmanned aircraft system must transmit through an internet connection to a Remote ID USS and broadcast the message elements at a rate of at least 1 message per second.

(k) *Cybersecurity.* The unmanned aircraft system must incorporate cybersecurity protections for the transmission and broadcast of the message elements in § 89.305.

§ 89.315 Minimum message elements transmitted by limited remote identification unmanned aircraft systems.

A limited remote identification unmanned aircraft system must transmit the following remote identification message elements through an internet connection to a Remote ID USS:

(a) The identity of the unmanned aircraft system consisting of:

(1) A serial number assigned to the unmanned aircraft by the person responsible for the production of the limited remote identification unmanned aircraft system; or

(2) A session ID assigned by a Remote ID USS.

(b) An indication of the latitude and longitude of the control station.

(c) An indication of the barometric pressure altitude of the control station.

(d) A time mark identifying the Coordinated Universal Time (UTC) time of applicability of a position source output.

(e) An indication of the emergency status of the unmanned aircraft system.

§ 89.320 Minimum performance requirements for limited remote identification unmanned aircraft systems.

A limited remote identification unmanned aircraft system must meet the following minimum performance requirements:

(a) *Control station location.* The location of the control station of the unmanned aircraft system must be generated and encoded into the message elements and must correspond to the location of the person manipulating the flight controls of the unmanned aircraft system.

(b) *Automatic Remote ID USS connection.* From takeoff to landing, the unmanned aircraft system must automatically maintain a connection to the internet, when available, and must transmit the appropriate message elements through that internet connection to a Remote ID USS.

(c) *Time mark.* The time mark message element must be synchronized with all other remote identification message elements.

(d) *Self-Testing and monitoring.* (1) When the unmanned aircraft system is powered on, it must automatically test the remote identification functionality and notify the person manipulating the flight controls of the unmanned aircraft system of the result of the test.

(2) The unmanned aircraft must not be able to take off if the remote identification equipment is not functional.

(3) The unmanned aircraft system must continuously monitor the remote identification functionality from takeoff to landing and must provide notification of malfunction or failure to the person manipulating the flight controls of the unmanned aircraft system.

(e) *Tamper resistance.* The unmanned aircraft system must be designed and produced in a way that reduces the ability of a person to tamper with the remote identification functionality.

(f) *Connectivity.* (1) The unmanned aircraft must not be able to take off unless it is connected to the internet and transmitting the message elements in § 89.315 through that internet connection to a Remote ID USS.

(2) The unmanned aircraft system must continuously monitor its connection to the internet and the unmanned aircraft system's transmission of the remote identification message elements through that internet connection to a Remote ID USS. If the connection to the internet is lost or the unmanned aircraft system is no longer transmitting the remote

identification message elements to a Remote ID USS, the unmanned aircraft system must notify the person manipulating the flight controls of the unmanned aircraft system.

(g) *Error correction.* The remote identification equipment must incorporate error correction in the transmission of the message elements in § 89.315.

(h) *Interference considerations.* The remote identification equipment must not interfere with other systems or equipment installed on the unmanned aircraft system, and other systems or equipment installed on the unmanned aircraft system must not interfere with the remote identification equipment.

(i) *Message transmission.* The unmanned aircraft system must be capable of transmitting the message elements for limited remote identification unmanned aircraft systems in § 89.315 through an internet connection to a Remote ID USS.

(j) *Message elements performance requirements.* (1) The reported position of the control station must be accurate to within 100 feet of the true position, with 95 percent probability.

(2) The reported barometric pressure altitude of the control station must be accurate to within 20 feet of the true barometric pressure altitude for pressure altitudes ranging from 0 to 10,000 feet.

(3) The unmanned aircraft system must transmit the latitude, longitude, and barometric pressure altitude of the control station no later than 1.0 second from the time of measurement to the time of transmission.

(4) The unmanned aircraft system must transmit the message elements at a rate of at least 1 message per second.

(k) *Cybersecurity.* The unmanned aircraft system must incorporate cybersecurity protections for the transmission of the message elements in § 89.315.

(l) *Range limitation.* The unmanned aircraft must be designed to operate no more than 400 feet from its control station.

(m) *Broadcast limitation.* The unmanned aircraft cannot broadcast any of the remote identification message elements identified in § 89.305 or § 89.315.

Subpart E—Means of Compliance

§ 89.401 Applicability.

This subpart prescribes—

(a) Requirements for means of compliance.

(b) Procedural requirements for the submission and acceptance of means of compliance used in the design and production of standard remote identification unmanned aircraft systems or limited remote identification unmanned aircraft systems to ensure such unmanned aircraft systems meet the minimum performance requirements of this part.

(c) Rules governing persons submitting means of compliance for FAA acceptance.

§ 89.405 Submission of a means of compliance for FAA acceptance.

(a) *Eligibility.* Any person may submit a means of compliance for acceptance by the FAA.

(b) *Required information.* A person requesting acceptance of a means of compliance must submit the following information to the FAA in a form and manner acceptable to the Administrator:

(1) The name of the person or entity submitting the means of compliance, the name of the main point of contact for communications with the FAA, the physical address, email address, and other contact information.

(2) A detailed description of the means of compliance.

(3) An explanation of how the means of compliance addresses all of the minimum performance requirements established in subpart D of this part so that any standard remote identification unmanned aircraft system or limited remote identification unmanned aircraft system designed and produced in accordance with such means of compliance meets the remote identification requirements of this part.

(4) Any substantiating material the person wishes the FAA to consider as part of the request.

(c) *Testing and validation.* A means of compliance submitted for acceptance by the FAA must include testing and validation procedures for persons responsible for the production of standard remote identification unmanned aircraft systems or limited remote identification unmanned aircraft systems to demonstrate through analysis, ground test, or flight test, as appropriate, how the standard remote identification unmanned aircraft system or the limited remote identification unmanned aircraft system performs its intended functions and meets the requirements in subpart D of this part, including any FAA performance requirements for radio station operation.

§ 89.410 Acceptance of a means of compliance.

(a) A person requesting acceptance of a means of compliance must demonstrate to the Administrator that the means of compliance addresses all of the requirements of subparts D and E of this part, and that any standard remote identification unmanned aircraft system or limited remote identification unmanned aircraft system designed and produced in accordance with such means of compliance would meet the performance requirements of subpart D of this part.

(b) The Administrator will evaluate a means of compliance that is submitted to the FAA and may request additional information or documentation, as needed, to supplement the means of compliance.

(c) If the Administrator determines the person has demonstrated that the means of compliance meets the requirements of subparts D and E, the FAA will notify the person that the Administrator has accepted the means of compliance. If the Administrator determines the person has not provided sufficient evidence to demonstrate that the means of compliance meets the requirements of subpart D or E, the FAA will notify the person that the Administrator has not accepted the means of compliance.

§ 89.415 Rescission.

(a) *Rescission of an FAA-accepted means of compliance.* (1) A means of compliance is subject to ongoing review by the Administrator. The Administrator may rescind its acceptance of a means of compliance if the Administrator determines that a means of compliance does not meet any or all of the requirements of subpart D or E of this part.

(2) The Administrator will publish a notice of rescission in the **Federal Register**.

(b) *Inapplicability of part 13, subpart D, of this chapter.* Part 13, subpart D, of this chapter does not apply to the procedures of paragraph (a) of this section.

§ 89.420 Record retention.

A person who submits a means of compliance that is accepted by the Administrator under this subpart must retain the following information for as long as the means of compliance is accepted plus an additional 24 calendar months, and must make available for inspection by the Administrator the following:

(a) All documentation and substantiating data submitted to the FAA for acceptance of the means of compliance.

(b) Records of all test procedures, methodology, and other procedures, as applicable.

(c) Any other information necessary to justify and substantiate how the means of compliance enables compliance with

the remote identification requirements of this part.

Subpart F—Design and Production of Unmanned Aircraft Systems With Remote Identification

§ 89.501 Applicability.

(a) This subpart prescribes—

(1) Requirements for the design and production of unmanned aircraft systems operated in the United States.

(2) Procedural requirements for the submission, acceptance, and rescission of declarations of compliance.

(3) Rules governing persons submitting declarations of compliance for FAA acceptance under this part.

(b) Except as provided in paragraph (c) of this section, this subpart applies to the design and production of unmanned aircraft systems operated in the United States.

(c) Unless the unmanned aircraft system is a standard remote identification unmanned aircraft system or a limited remote identification unmanned aircraft system, this subpart does not apply to the design or production of:

(1) Amateur-built unmanned aircraft systems.

(2) Unmanned aircraft systems of the United States Government.

(3) Unmanned aircraft systems where the unmanned aircraft weighs less than 0.55 pounds including the weight of anything attached to or carried by the aircraft.

(4) Unmanned aircraft systems designed or produced exclusively for the purpose of aeronautical research or to show compliance with regulations.

§ 89.505 Serial numbers.

Serial number required. No person may produce a standard remote identification unmanned aircraft system or a limited remote identification unmanned aircraft system unless the unmanned aircraft is issued a serial number that complies with ANSI/CTA–2063–A. ANSI/CTA–2063–A, *Small Unmanned Aerial Systems Serial Numbers* (September 2019) is incorporated by reference into this section with the approval of the Director of the Office of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. All approved material is available for inspection at the FAA's Office of Rulemaking (ARM–1), 800 Independence Avenue SW, Washington, DC 20590 (telephone 202–267–9677) and is available from Consumer Technology Association, 1919 South Eads Street, Arlington, VA 22202 or at *https://www.cta.tech*. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov,* or go to *www.archives.gov/federal-register/cfr/ibr-locations.html.*

§ 89.510 Production requirements.

(a) *General production requirements.* After [DATE 24 MONTHS AFTER THE EFFECTIVE DATE OF THE FINAL RULE], no person may produce an unmanned aircraft system unless:

(1) The unmanned aircraft system is designed and produced to meet the minimum performance requirements for standard remote identification unmanned aircraft systems established in § 89.310 or for limited remote identification unmanned aircraft systems established in § 89.320 and in accordance with an FAA-accepted means of compliance.

(2) The unmanned aircraft system meets the requirements of this subpart.

(3) The FAA has accepted a declaration of compliance for that unmanned aircraft system.

(b) *Inspection, audit, and notification requirements.* A person responsible for the production of standard remote identification unmanned aircraft systems or limited remote identification unmanned aircraft systems must:

(1) Upon request, allow the Administrator to inspect its facilities, technical data, and any standard remote identification unmanned aircraft system or limited remote identification unmanned aircraft system the person produces, and to witness any tests necessary to determine compliance with this subpart.

(2) Perform independent audits on a recurring basis, and whenever the FAA provides notice of noncompliance or of potential noncompliance, to demonstrate the unmanned aircraft systems listed under a declaration of compliance meet the requirements of this subpart. The person responsible for the production of standard remote identification unmanned aircraft systems or limited remote identification unmanned aircraft systems must provide the results of all such audits to the FAA upon request.

(3) Maintain product support and notification procedures to notify the public and the FAA of any defect or condition that causes an unmanned aircraft system to no longer meet the requirements of this subpart, within 15 calendar days of the date the person becomes aware of the defect or condition.

§ 89.515 Labeling.

No person may produce a standard remote identification unmanned aircraft system or a limited remote identification unmanned aircraft system unless it displays a label indicating that the unmanned aircraft system meets the remote identification requirements of this part and indicating whether the unmanned aircraft system is a standard remote identification unmanned aircraft system or a limited remote identification unmanned aircraft system. The label must be in English and be legible, prominent, and permanently affixed to the unmanned aircraft.

§ 89.520 Submission of a declaration of compliance for FAA acceptance.

(a) *Eligibility.* A person responsible for the production of standard remote identification unmanned aircraft systems or limited remote identification unmanned aircraft systems must submit a declaration of compliance for acceptance by the FAA.

(b) *Required information.* The person responsible for the production of a standard remote identification unmanned aircraft system or a limited remote identification unmanned aircraft system requesting acceptance of a declaration of compliance must declare that the unmanned aircraft system complies with the requirements of this subpart by submitting a declaration of compliance to the FAA in a form and manner acceptable to the Administrator. The declaration must include at a minimum the following information:

(1) The name, physical address, telephone number, and email address of the person responsible for production of the unmanned aircraft system.

(2) The unmanned aircraft system's make and model.

(3) The unmanned aircraft's serial number, or the range of serial numbers for which the person responsible for production is declaring compliance.

(4) The means of compliance used in the design and production of the unmanned aircraft system and whether the unmanned aircraft system is a standard remote identification unmanned aircraft system or a limited remote identification unmanned aircraft system.

(5) Whether the declaration of compliance is an initial declaration or an amended declaration, and if the declaration of compliance is an amended declaration, the reason for the amendment.

(6) A declaration that the person responsible for the production of the unmanned aircraft system:

(i) Can demonstrate that the unmanned aircraft system was designed and produced to meet the minimum performance requirements of § 89.310 or § 89.320 by using an FAA-accepted means of compliance.

(ii) Complies with the requirements of § 89.510(b).

(7) Statement that 47 CFR-compliant radio frequency equipment is used and is integrated into the unmanned aircraft system without modification to its authorized radio frequency parameters.

§ 89.525 Acceptance of a declaration of compliance.

(a) The Administrator will evaluate a declaration of compliance that is submitted to the FAA and may request additional information or documentation, as needed, to supplement the declaration of compliance.

(b) If the Administrator determines that the submitter has demonstrated compliance with the requirements of this subpart, the FAA will notify the submitter that the Administrator has accepted the declaration of compliance. If the Administrator determines the submitter has not demonstrated compliance, the FAA will notify the submitter that the Administrator has not accepted the declaration of compliance.

§ 89.530 Rescission and reconsideration.

(a) *Rescission of the FAA's acceptance of a declaration of compliance.* (1) A declaration of compliance is subject to ongoing review by the Administrator. The Administrator may rescind acceptance of a declaration of compliance under circumstances including but not limited to the following:

(i) A standard remote identification unmanned aircraft system or a limited remote identification unmanned aircraft system listed under an accepted declaration of compliance does not meet the minimum performance requirements of § 89.310 or § 89.320.

(ii) A previously FAA-accepted declaration of compliance does not meet any of the requirements of this subpart.

(iii) The FAA rescinds acceptance of the means of compliance listed in an FAA-accepted declaration of compliance.

(2) The Administrator will notify the person who submitted the FAA-accepted declaration of compliance of any issue of noncompliance.

(3) If the Administrator determines that it is in the public interest, prior to rescinding acceptance of a declaration of compliance, the Administrator may provide a reasonable period of time for the person who submitted the declaration of compliance to remediate the noncompliance. A failure to remediate the noncompliance constitutes cause for rescission of the FAA's acceptance of the declaration of compliance.

(4) The Administrator will notify the person who submitted the declaration of compliance of the decision to rescind acceptance of the declaration of compliance by publishing a notice of rescission in the **Federal Register**.

(b) *Petition to reconsider the FAA's decision to rescind acceptance of a declaration of compliance.* (1) The person who submitted the FAA-accepted declaration of compliance or any person adversely affected by the rescission of the Administrator's acceptance of a declaration of compliance may petition for a reconsideration of the decision by submitting a request to the FAA in a form and manner acceptable to the Administrator within 60 calendar days of the date of publication in the **Federal Register** of notification of rescission.

(2) A petition to reconsider the rescission of the Administrator's acceptance of a declaration of compliance must show that the petitioner is an interested party and has been adversely affected by the decision of the FAA. The petition must also demonstrate at least one of the following:

(i) The petitioner has a significant additional fact not previously presented to the FAA.

(ii) The Administrator made a material error of fact in the decision to rescind acceptance of the declaration of compliance.

(iii) The Administrator did not correctly interpret a law, regulation, or precedent.

(3) Upon consideration of the information submitted by the petitioner, the Administrator will notify the petitioner and the person who submitted the declaration of compliance (if different) of the decision to reinstate or to not reinstate the Administrator's acceptance of the declaration of compliance.

(c) *Inapplicability of part 13, subpart D, of this chapter.* Part 13, subpart D, of this chapter does not apply to the procedures of paragraphs (a) and (b) of this section.

§ 89.535 Record retention.

A person who submits a declaration of compliance under this subpart that is accepted by the Administrator must retain the following information for as long as the UAS listed on that declaration of compliance are produced plus an additional 24 calendar months, and must make available for inspection by the Administrator the following:

(a) The means of compliance, all documentation, and substantiating data related to the means of compliance used.

(b) Records of all test results.

(c) Any other information necessary to demonstrate compliance with the means of compliance so that the unmanned aircraft system meets the remote identification requirements and the design and production requirements of this part.

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 15. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40101, 40103, 40105, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, 47534, Pub. L. 114–190,130 Stat. 615 (49 U.S.C. 44703 note); articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180), (126 Stat. 11).

■ 16. Amend § 91.215 by revising paragraphs (b) introductory text and (c) and adding paragraph (e) to read as follows:

§ 91.215 ATC transponder and altitude reporting equipment and use.

* * * * *

(b) *All airspace.* Unless otherwise authorized or directed by ATC, and except as provided in paragraph (e)(1) of this section, no person may operate an aircraft in the airspace described in paragraphs (b)(1) through (5) of this section, unless that aircraft is equipped with an operable coded radar beacon transponder having either Mode 3/A 4096 code capability, replying to Mode 3/A interrogations with the code specified by ATC, or a Mode S capability, replying to Mode 3/A interrogations with the code specified by ATC and intermode and Mode S interrogations in accordance with the applicable provisions specified in TSO C–112, and that aircraft is equipped with automatic pressure altitude reporting equipment having a Mode C capability that automatically replies to Mode C interrogations by transmitting pressure altitude information in 100-foot increments. This requirement applies—

* * * * *

(c) *Transponder-on operation.* Except as provided in paragraph (e)(2) of this section, while in the airspace as specified in paragraph (b) of this section or in all controlled airspace, each person operating an aircraft equipped

with an operable ATC transponder maintained in accordance with § 91.413 of this part shall operate the transponder, including Mode C equipment if installed, and shall reply on the appropriate code or as assigned by ATC, unless otherwise directed by ATC when transmitting would jeopardize the safe execution of air traffic control functions.

* * * * *

(e) *Unmanned aircraft systems.* (1) The requirements of paragraph (b) of this section do not apply to a person operating an unmanned aircraft system under this part unless the operation is conducted under a flight plan and the person operating the unmanned aircraft system maintains two-way radio communication with ATC.

(2) No person may operate an unmanned aircraft system under this part with a transponder on unless:

(i) The operation is conducted under a flight plan and the person operating the unmanned aircraft system maintains two-way radio communication with ATC; or

(ii) The use of a transponder is otherwise authorized by the Administrator.

■ 17. Amend § 91.225 by revising paragraphs (a) introductory text, (b) introductory text, (d) introductory text, and (f) introductory text and adding paragraph (i) to read as follows:

§ 91.225 Automatic Dependent Surveillance-Broadcast (ADS–B) Out equipment and use.

(a) After January 1, 2020, except as provided in paragraph (i) of this section or unless otherwise authorized by ATC, no person may operate an aircraft in Class A airspace unless the aircraft has equipment installed that—

* * * * *

(b) After January 1, 2020, except as provided in paragraph (i) of this section or unless otherwise authorized by ATC, no person may operate an aircraft below 18,000 feet MSL and in airspace described in paragraph (d) of this section unless the aircraft has equipment installed that—

* * * * *

(d) After January 1, 2020, except as provided in paragraph (i) of this section or unless otherwise authorized by ATC, no person may operate an aircraft in the following airspace unless the aircraft has equipment installed that meets the requirements in paragraph (b) of this section:

* * * * *

(f) Except as provided in paragraph (i) of this section, each person operating an aircraft equipped with ADS–B Out must operate this equipment in the transmit mode at all times unless—

* * * * *

(i) For unmanned aircraft systems:

(1) The requirements of paragraph (b) of this section do not apply to a person operating an unmanned aircraft system under this part unless the operation is conducted under a flight plan and the person operating the unmanned aircraft system maintains two-way radio communication with ATC.

(2) No person may operate an unmanned aircraft system under this part with Automatic Dependent Surveillance-Broadcast Out equipment in transmit mode unless:

(i) The operation is conducted under a flight plan and the person operating the unmanned aircraft system maintains two-way radio communication with ATC; or

(ii) The use of ADS–B Out is otherwise authorized by the Administrator.

PART 107—SMALL UNMANNED AIRCRAFT SYSTEMS

■ 18. The authority citation for part 107 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 40101 note, 40103(b), 44701(a)(5), 44807.

§ 107.53 [Redesignated as § 107.56]

■ 19. Redesignate § 107.53 as § 107.56.

■ 20. Add §§ 107.52 and new 107.53 to subpart B to read as follows:

§ 107.52 ATC transponder equipment prohibition.

Unless otherwise authorized by the Administrator, no person may operate a small unmanned aircraft system under this part with a transponder on.

§ 107.53 ADS–B Out Prohibition

Unless otherwise authorized by the Administrator, no person may operate a small unmanned aircraft system under this part with Automatic Dependent Surveillance-Broadcast (ADS–B) Out equipment in transmit mode.

Issued in Washington, DC, under the authority of 49 U.S.C. 106(f), 40101, 40103, 44701(a)(5), 44805, 44809, and section 2202 of Pub. L. 114–190, on December 20, 2019.

Steve Dickson,

Administrator.

[FR Doc. 2019–28100 Filed 12–26–19; 11:15 am]

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Part III

Department of Transportation

Federal Railroad Administration

49 CFR Part 213

Rail Integrity Amendments & Track Safety Standards; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 213

[Docket No. FRA–2018–0104]

RIN 2130–AC53

Rail Integrity Amendments & Track Safety Standards

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FRA is proposing to revise its regulations governing the minimum safety requirements for railroad track. The proposed changes include allowing inspection of rail using continuous rail testing; allowing the use of flange-bearing frogs in crossing diamonds; relaxing the guard check gage limits on heavy-point frogs used in Class 5 track; removing an inspection-method exception for high-density commuter lines; and other miscellaneous revisions. Overall, the proposed revisions would benefit track owners, railroads, and the public by reducing unnecessary costs and incentivizing innovation, while not negatively affecting rail safety.

DATES: Written comments must be received by March 2, 2020. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

ADDRESSES: *Comments:* Comments related to Docket No. FRA–2018–0104 may be submitted by any of the following methods:

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

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking (2130–AC53). All comments received will be posted without change to *http://www.regulations.gov;* this includes any personal information. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

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

FOR FURTHER INFORMATION CONTACT: Matthew Brewer, Staff Director, Rail Integrity Division, Office of Railroad Safety, Federal Railroad Administration, 500 East Broadway, Suite 240, Vancouver, WA 98660, telephone: 202–385–2209; Yu-Jiang Zhang, Staff Director, Track Division, Office of Railroad Safety, Federal Railroad Administration, 1200 New Jersey Avenue SE, W33–302, Washington, DC 20590, telephone: 202–493–6460; or Aaron Moore, Attorney, Office of Chief Counsel, Federal Railroad Administration, 1200 New Jersey Avenue SE, W31–216, Washington, DC 20590, telephone: 202–493–7009.

SUPPLEMENTARY INFORMATION:

Table of Contents for Supplementary Information

I. Executive Summary
II. Rulemaking Authority and Background
III. Development of the NPRM
IV. Summary of Major Provisions of the NPRM
  A. Proposal To Allow Continuous Rail Testing
  B. Proposal To Remove High-Density Commuter Line Exception
  C. Incorporation of Flange-Bearing Frog and Heavy-Point Frog Waivers
  i. Heavy-Point Frogs
  ii. Flange-Bearing Frog Crossing Diamonds
V. Section-by-Section Analysis
VI. Regulatory Impact and Notices
  A. Executive Order 12866, and DOT Regulatory Policies and Procedures
  B. Regulatory Flexibility Act
  C. Paperwork Reduction Act
  D. Environmental Impact
  E. Federalism Implications
  F. Unfunded Mandates Reform Act of 1995
  G. Energy Impact
  H. Privacy Act Statement

I. Executive Summary

Beginning in 2015, the Track Safety Standards Working Group (TSS Working Group) of the Railroad Safety Advisory Committee (RSAC) met numerous times to ''consider specific improvements to the Track Safety Standards . . . designed to enhance rail safety by improving track inspection methods, frequency, and documentation.'' As detailed below, FRA's proposals in this NPRM are, in part, a direct result of the RSAC's recommendations and of FRA's own review and analysis of the Track Safety Standards (TSS or Standards) (49 CFR part 213). To streamline and ensure its regulations are as up to date as practicable, FRA periodically reviews and proposes amendments to its regulations. Various Executive Orders (for example, President Trump's Executive Order 13771, discussed in more detail below in section II) also encourage or require such review with an emphasis on cost savings. This NPRM is responsive to those Executive Orders.

In this NPRM, FRA proposes to amend subparts A, D, F, and G of the TSS to (1) allow for continuous rail testing, (2) incorporate longstanding waivers related to track frogs, (3) remove the exception for high-density commuter lines from certain track inspection method requirements, and (4) incorporate several consensus-based, RSAC recommendations.

FRA proposes to amend part 213 to allow for what is commonly referred to as ''continuous rail testing.'' Although the Rail Integrity Working Group did not reach consensus on specific, recommended regulatory text, FRA's proposal to allow continuous rail testing is based, in part, on information garnered from the Working Group's discussions of the issue. Generally, continuous rail testing differs from the traditional stop-and-verify rail inspection process, which involves an operator riding in a test vehicle traveling over the rail and reviewing test data in real-time as the vehicle collects it, including stopping the vehicle to verify indications of possible rail defects. Continuous rail testing, on the other hand, is a rail inspection process that tests the rail non-stop along a designated route, collecting the rail inspection data and transmitting it to an analyst at a centralized location for review and categorization of suspected rail flaws that are subsequently field-verified. To enable this process, FRA proposes that those entities electing to use continuous rail testing be exempt from the current requirement that certain indications of suspected rail defects be immediately verified and all other indications be field-verified within four hours. Instead, FRA proposes to extend the verification period to allow the data to be analyzed off-site but still require field verification within a specified period (*i.e.,* between 24 and 84 hours, depending on the type of defect). Since 2011, multiple railroads have conducted pilot projects to test and evaluate the effectiveness of the continuous rail testing process. FRA believes that allowing continuous

testing will enhance the effectiveness of the rail testing process while decreasing the economic cost to the industry.

FRA also proposes to incorporate two existing waivers into part 213, to provide additional flexibility in the use of track frogs. A frog is a track component used at the intersection of two running rails to provide support for wheels and passage for their flanges, thus permitting wheels on either rail to cross the other intersecting rail. As explained in more detail below, FRA has approved a waiver to allow railroads to use heavy-point frogs in Class 5 track that do not comply with the current minimum guard check gage limit. A heavy-point frog is a unique design that has a thicker frog point. Under the current waiver, those heavy-point frogs in Class 5 track are instead permitted to meet the minimum guard check gage limit for Class 4 track. Additionally, FRA has issued a waiver allowing the railroad industry to utilize flange-bearing-frog crossing diamonds that do not comply with the flangeway depth requirements in 49 CFR 213.137(a). Flange-bearing-frog crossing diamonds are different from traditional tread-bearing frogs in that they are designed to support wheels running on their flanges. Both waivers have been in place for an extended period of time and both heavy-point frogs and flange-bearing-frog crossing diamonds have been safe under them.

In response to National Transportation Safety Board (NTSB) Safety Recommendation R–14–11 and sec. 11409 of the Fixing America's Surface Transportation Act, Public Law 114–94, 129 Stat. 1686 (Dec. 4, 2015) (FAST Act), FRA also proposes to remove the exception in 49 CFR 213.233(b)(3) concerning the manner of inspecting high-density commuter lines. Section 213.233(b)(3) normally requires each main track be traversed by vehicle or inspected on foot at least once every two weeks, and each siding be traversed by vehicle or inspected on foot at least once every month. Section 213.233(b)(3) exempts high-density commuter lines where track time does not permit on-track vehicle inspection and where track centers are 15 feet or less apart, but FRA is not aware of any railroads utilizing this exception and, as discussed below, agrees that in the interest of safety the exception should be removed.

FRA also proposes other miscellaneous revisions to part 213 (*e.g.,* revising qualification requirements for certain railroad employees, adjusting recordkeeping requirements, etc.), many of which are based on consensus recommendations of the TSS Working Group. FRA proposes to adopt these consensus recommendations with generally minor changes for purposes of clarity, formatting, and consistency. Those proposed revisions are discussed in more detail below.

FRA analyzed the economic impact of this proposed rule over a 10-year period and estimated its costs and cost savings. If railroad track owners choose to take advantage of the cost savings from this proposed rule, they would incur additional labor costs associated with continuous rail testing. These costs are voluntary because railroad track owners would only incur them if they choose to operate continuous rail testing vehicles. The following table shows the net cost savings of this proposed rule, over the 10-year analysis.

NET COST SAVINGS, IN MILLIONS

[2018 dollars]

	Present value 7%	Present value 3%	Annualized 7%	Annualized 3%
Costs	$25.9	$31.4	$3.7	$3.7
Cost Savings	148.7	180.3	21.2	21.1
Net Cost Savings	122.8	148.9	17.5	17.4

This proposed rule would result in cost savings for railroad track owners. The cost savings are in the table below.

COST SAVINGS, IN MILLIONS

[Over a 10-year period of analysis]

Section	Present value 7%	Present value 3%	Annualized 7%	Annualized 3%
Flange Bearing Frog Inspections	$0.191	$0.223	$0.027	$0.026
Frog Waiver Savings	0.013	0.016	0.002	0.002
Continuous Testing Labor Cost Savings	7.086	8.590	1.009	1.007
Slow Orders	141.329	171.340	20.122	20.086
Continuous Testing Waiver Savings	0.130	0.154	0.012	0.010
Total	148.749	180.324	21.172	21.132

The table below presents the estimated costs, over the 10-year analysis.

ESTIMATED COSTS, IN MILLIONS

[Over a 10-year period of analysis]

	Present value 7%	Present value 3%	Annualized 7%	Annualized 3%
Continuous Testing	$25.9	$31.4	$3.7	$3.7

II. Rulemaking Authority and Background

On January 30, 2017, President Trump issued Executive Order (E.O.) 13771. E.O. 13771 seeks to ''manage the costs associated with the governmental imposition of private expenditures required to comply with Federal regulations'' and directs each executive department or agency to identify for elimination two existing regulations for every new regulation issued. E.O. 13771 also requires any new incremental cost associated with a new regulation, to the extent permitted by law, be at least offset by the elimination of existing costs associated with at least two prior regulations. Similarly, E.O. 13610 (Identifying and Reducing Regulatory Burdens, issued May 12, 2012), seeks ''to modernize our regulatory system and to reduce unjustified regulatory burdens and costs'' and directs each executive agency to conduct retrospective reviews of its regulatory requirements to identify potentially beneficial modifications to regulations. 77 FR 28469. Executive agencies are to ''give priority, consistent with the law, to those initiatives that will produce significant quantifiable monetary savings or significant quantifiable reductions in paperwork burdens while protecting public health, welfare, safety and our environment.'' *See id.* at 28470.

In response to E.O. 13771, FRA initiated a review of its existing regulations with the goal of identifying regulations that it could amend or eliminate to reduce the overall regulatory, paperwork, and cost burden on entities subject to FRA jurisdiction. FRA identified part 213 as a regulation FRA could amend and thereby reduce the railroad industry's overall regulatory and cost burden without negatively affecting safety. Also, in response to a DOT request for public comment on existing rules ripe for repeal or modification, the Association of American Railroads and other industry participants encouraged FRA to revise part 213 to allow for the use of innovations in rail inspection technology, specifically the use of non-stop rail inspection vehicles. *See* docket number DOT–OST–2017–0069 (available online at *www.regulations.gov*). This rule responds to those comments by proposing to provide railroads with the flexibility to use continuous rail testing in a way that will facilitate operational efficiency and enhance safety.

Section 20103 of title 49 of the United States Code (U.S.C.) provides that, ''[t]he Secretary of Transportation, shall prescribe regulations and issue orders for every area of railroad safety.'' This statutory section codifies the authority granted to the Secretary of Transportation under the Federal Railroad Safety Act of 1970. The Secretary's authority to act under sec. 20103 is delegated to the Federal Railroad Administrator. *See* 49 CFR 1.89.

FRA published the first Standards on October 20, 1971. The most comprehensive revision of the Standards resulted from the Rail Safety Enforcement and Review Act of 1992, Public Law 102–365, 106 Stat. 972 (Sept. 3, 1992), later amended by the Federal Railroad Safety Authorization Act of 1994, Public Law 103–440, 108 Stat. 4615 (Nov. 2, 1994), which led to FRA issuing a final rule amending the Standards in 1998. *See* 63 FR 34029, June 22, 1998; 63 FR 54078, Oct. 8, 1998.

III. Development of the NPRM

As noted above, the proposals in this NPRM are based, in part, on the consensus recommendations of the TSS Working Group and, in part, on FRA's own review and analysis. The RSAC provides a forum for developing consensus recommendations and providing information to the Administrator of FRA on rulemakings and other safety program issues, and includes representatives from all the agency's major stakeholders. The RSAC established the TSS Working Group on February 22, 2006, and it met numerous times since formation and addressed multiple tasks and issues. Beginning in 2015, one of those tasks involved some of the revisions proposed in this NPRM. At the July 19–20, 2016 meeting, FRA presented draft proposed revisions to part 213. Over the course of two years and four additional meeting, the TSS Working Group discussed the draft revisions in depth, considered draft revisions presented by other members, and ultimately tailored the revisions to reflect the suggestions and concerns of the TSS Working Group members. During the March 13–14, 2018 meeting, the TSS Working Group unanimously recommended proposed revisions, which form the basis for parts of this NPRM. As proposed in this NPRM and discussed in more detail below, these revisions include removal of the high-density commuter line inspection-method exception, changes to qualification requirements for certain railroad employees, and revisions to recordkeeping requirements.

IV. Summary of Major Provisions of the NPRM

A. Proposal To Allow Continuous Rail Testing

FRA sponsors railroad safety research, including research on rail integrity. The general objectives of FRA rail integrity research have been to improve railroad safety by reducing rail failures and the associated risks of train derailment, and to do so more efficiently through maintenance practices that increase rail service life. Generally, FRA's rail integrity research focuses on four distinct areas: Analysis of rail defects; residual stresses in rail; strategies for rail testing; and other related issues (*e.g.,* advances in nondestructive inspection techniques; feasibility of advanced materials for rail, rail lubrication, rail grinding and wear; etc.). FRA's rail integrity research is an ongoing effort, and is particularly important as annual tonnages and average axle loads continue to increase on the nation's railroads. For more discussion of rail integrity generally, see FRA's 2014 final rule titled Track Safety Standards; Improving Rail Integrity. 79 FR 4234, Jan. 24, 2014.

One of the most important assets to the railroad industry is its rail infrastructure. Historically, a primary concern of railroads has been the probability of rail flaw development. Rail defects may take many forms (*e.g.,* rail head surface conditions and internal rail flaws). If defects go undetected, they may grow to critical size, potentially resulting in a broken rail and subsequent derailment. Accordingly, to prevent rail defect development, railroads seek ways to improve their rail maintenance practices, install more

wear-resistant rail, utilize improved flaw-detection technologies, and increase rail inspection frequencies.

The development of internal rail defects is an inevitable consequence of the accumulation and effects of fatigue under repeated loading. The direct cost of an undetected rail defect is the difference between the cost of replacing the rail when a failure occurs, plus the cost of any damage caused by the failure, which can be considerably more than the cost of the planned replacement of detected defects before they fail. Rail failures can have widespread and catastrophic consequences, such as environmental damage and potential injury and loss of life along with excessive service interruptions, and extensive traffic rerouting. The challenge for the railroad industry is to avoid the occurrence of rail service failure due to the presence of an undetected defect.

The effectiveness of a rail inspection program depends, in part, on the test equipment being properly designed and capable of reliably detecting rail defects of a certain size and orientation, while also ensuring that the test frequencies allow for detection of defects before they grow to critical size. Normal railroad operations can add additional complexity to the rail inspection program. High traffic and tonnage volumes can accelerate defect growth, while at the same time decreasing the time available for rail inspection. Additionally, these high volumes can lead to rail surface fatigue that may negatively affect the ability of test equipment to see into the rail and thus prevent detection of an underlying rail flaw by the test equipment. Most railroads attempt to control risk by monitoring test reliability through an evaluation process of fatigue service failures that occur soon after testing, and by comparing the ratio of service failures or broken rails to detected rail defects.

Current rail flaw detection methods that are performed in the railroad industry utilize various types of processes with human involvement in the interpretation of the test data. These include the:

- Portable test process, which consists of an operator pushing a test device over the rail at a walking pace while visually interpreting the test data;
- Stop-and-verify process, where a vehicle-based flaw detection system tests at a slow speed (normally not exceeding 20 m.p.h.) gathering data that is presented to the operator on a test monitor for interpretation and field verification;
- Chase car process, which consists of a lead test vehicle performing the flaw detection process in advance of a verification chase car; and
- Continuous test process, which is one of the subjects addressed in this NPRM and consists of operating a high-speed, vehicle-based, test system non-stop along a designated route, analyzing the test data at a centralized location, and subsequently verifying suspect defect locations.

The main technologies utilized for the processes listed above are the ultrasonic and induction methods. Ultrasonic technology is the primary technology used, with induction technology currently used as a complementary system. As with any non-destructive test method, these technologies are susceptible to physical limitations that allow poor rail head surface conditions to negatively influence the detection of rail flaws. Other conditions that can limit the effectiveness of inspection include heavy lubrication or debris on the rail head.

Induction testing introduces a high-level, direct current into the top of the rail and establishing a magnetic field around the rail head. An induction sensor unit is then passed through the magnetic field. The presence of a rail flaw will result in a distortion of the current flow and the magnetic field, which will be detected by the search unit.

Ultrasonic testing uses sound waves that propagate at a frequency that is normally between 2.25 MHz (million cycles per second) to 5.0 MHz, above the range of human hearing. Ultrasonic waves are generated into the rail by transducers placed at various angles with respect to the rail surface. The ultrasonic waves produced by these transducers normally scan the entire rail head and web, as well as the portion of the base directly beneath the web. Internal rail defects represent a discontinuity in the material that constitutes the rail. This discontinuity acts as a reflector to the ultrasonic waves, resulting in a portion of the wave being reflected back to the respective transducer. These conditions include rail head surface conditions, internal or visible rail flaws, weld upset/finish, or known reflectors within the rail geometry such as drillings or rail ends. The information is then processed by the test system and recorded in the permanent test data record.

FRA is proposing to amend its regulations on inspection of rail and verification of indications of defective rail to allow for continuous rail testing. *See* proposed § 213.240. The current regulations require immediate verification of certain indications and require all others be verified within 4 hours. 49 CFR 213.113(b). This verification timeframe has made it practically impossible for track owners to conduct continuous testing. Consistent with FRA's desire to improve rail safety and encourage innovation that does the same, this proposed rulemaking would establish procedures that, except for indications of a broken rail, extend the required verification timeframes for those entities that adopt continuous testing. FRA believes this would facilitate operational efficiency and encourage both a broader scope and more frequent use of rail testing in the industry.

Although rail flaw detection is not an exact science, noncritical rail flaw limits can be difficult to estimate, and numerous variables affect rail flaw growth, FRA believes the procedures proposed in this NPRM are sufficient to ensure the extended verification timeframes would not result in complete rail failure prior to verification. Continuous rail testing is a process that has been successfully trialed under the waiver process outlined in 49 CFR 213.17 on select rail segments on multiple railroads in the U.S. since 2009.[1] In general, FRA is authorized to waive compliance with its regulations if the waiver ''is in the public interest and consistent with railroad safety.'' 49 U.S.C. 20103(d). Under 49 CFR 213.17 and FRA's Rules of Practice found at 49 CFR part 211, any person subject to FRA's safety regulations can submit a petition for a waiver from those requirements. FRA's Rules of Practice provide a process and outline the requirements for waiver petitions. Each properly filed petition for a waiver is referred to the FRA Railroad Safety Board (Board) for decision. *See* 49 CFR 211.41(a). The Board's decision is typically rendered after a notice is published in the **Federal Register** and an opportunity for public comment is provided. *See* 49 CFR 211.41. If the Board grants the waiver request, the Board may impose conditions on the grant of relief to ensure the decision is in the public interest and consistent with railroad safety. This rulemaking would codify the continuous rail testing practices FRA has permitted by waiver and allow for additional flexibility in the rail inspection process. Track owners that do not desire to conduct continuous rail

[1] *See* docket numbers FRA–2008–0111 (CSX), FRA–2011–0107 (CSX). FRA–2014–0029 (CN), FRA–2015–0019 (NS), FRA–2015–0115 (KCS), FRA–2015–0130 (BNSF), FRA–2018–0022 (UP), FRA–2018–0031 (LIRR), FRA–2019–0057 (MNCW) (available online at *www.regulations.gov*).

testing would not be affected by the proposal.

Further, FRA's proposal would provide additional flexibility in the rail flaw detection processes to promote innovative approaches to improving safety in railroad operations. Proposed § 213.240 would provide track owners the option to conduct continuous rail testing to satisfy the rail inspection requirements in § 213.237 or, where applicable, § 213.339. This proposed section would allow additional time for verification of indications of potential rail flaws identified through continuous testing. This additional time would allow for improvements in planning and execution of rail inspections and rail defect remediation, enabling track owners to conduct rail inspections with less impact on railroad operations. By reducing the impact on the rail network, more track time may become available to conduct maintenance and increase inspections. However, as continuous testing is a more complicated process compared to the traditional stop-and-verify rail inspection process, additional criteria have been proposed to ensure that this elective process is conducted in a manner that is in the interests of safety and has sufficient recordkeeping and transparency to allow for adequate FRA oversight.

The proposed continuous rail test section would not modify the requirements to inspect rail as set forth in §§ 213.237 and 213.339, nor would it make any change to the remedial actions required after field verification of a rail defect as described in § 213.113(c).

B. Proposal To Remove High-Density Commuter Line Exception

FRA is proposing to remove what is commonly referred to as the ''high-density commuter line exception'' from the track inspection requirements in § 213.233. This exception applies to ''high density commuter railroad lines where track time does not permit on-track vehicle inspection and where track centers are 15 feet or less apart'' and exempts those operations from 49 CFR 213.233(b)(3). Section 213.233(b)(3) requires each main track to be traversed by vehicle or inspected on foot at least once every two weeks and each siding at least once each month. Although other provisions of § 213.233 do require that such track be inspected, § 213.233(b)(3) focuses on the direct manner of conducting those inspections over or on the subject track.

On May 17, 2013, Metro-North Commuter Railroad (Metro-North) passenger train 1548 was traveling eastbound from Grand Central Station, New York, toward New Haven, Connecticut, when it derailed in Bridgeport, Connecticut, and was struck by westbound Metro-North passenger train 1581. The accident resulted in approximately 65 injuries and damages estimated at over $18 million. During the investigation, a pair of broken compromise joint bars were found at the point of derailment. One of those broken joint bars was located on the gage side of the track over which train 1548 was traveling (main track 4). NTSB's investigation also found that Metro-North last inspected the track in the area two days before the accident, but the inspection was conducted by an inspector in a hi-rail vehicle traveling on main track 2, which was *next to main track 4, and the joint bars in question would not have been visible during that inspection. See NTSB's Railroad Accident Brief, October 24, 2014, available at https://www.ntsb.gov/investigations/AccidentReports/Reports/RAB1409.pdf.* In response to the Bridgeport accident, NTSB issued Safety Recommendation R–14–11 to FRA, which recommended that FRA revise the Standards, specifically § 213.233(b)(3), to remove the high-density commuter line exception.

Subsequently, in 2015, Congress passed the FAST Act, and mandated in section 11409 that the Secretary of Transportation evaluate the Standards to determine if the high-density commuter line exception should be retained. After considering safety, system capacity, and other relevant factors such as the views of the railroad industry and relevant labor organizations, FRA has concluded, and the TSS Working Group unanimously agreed, that the high-density commuter line exception should be removed. All railroad operations, whether commuter or freight, or both, should be subject to the same inspection method requirements in § 213.233(b)(3). No track owners or railroads currently utilize this exception.

C. Incorporation of Flange-Bearing Frog and Heavy-Point Frog Waivers

As explained in more detail above, under 49 CFR 213.17 and FRA's Rules of Practice found at 49 CFR part 211, any person subject to FRA's safety regulations can submit a petition for a waiver from those requirements. FRA is proposing to revise two sections of part 213 (§§ 213.137 and 213.143) to incorporate longstanding waivers that, with certain limiting conditions, permit the use of flange-bearing frogs and heavy-point frogs that do not comply with current FRA standards. FRA believes that under certain conditions, use of these types of frogs provide safety benefits by more evenly distributing loads across the frogs with minimal impact to rail surfaces, as compared to other types of rail frogs. Incorporating these waivers into FRA's regulations would result in industry cost-savings larger than from the waivers alone.

i. Heavy-Point Frogs

A heavy-point frog (HPF) is a unique design that has a thicker frog point than a traditional frog. This unique design offers safety benefits over a traditional frog because of more inert mass to reduce metal fatigue from impact loading, greater durability, reduced susceptibility to deformation of the frog point, and better ability to guide the wheel flange toward the proper flangeway. In an HPF, the gage line is $^{11}/_{32}$ (0.3438) of an inch thicker than a traditional, rail-bound manganese frog point. This reduces the standard guard check distance from 4 feet, $6^{5}/_{8}$ (54.6250) inches to 4 feet, $6^{29}/_{64}$ (54.4531) inches, which does not comply with minimum guard check distance for Class 5 track.

As defined in 49 CFR 213.143, footnote 1, and as shown in Figure 1 below, guard check gage is the distance between the gage line of a frog to the guard line (a line along the side of the flangeway nearest to the center of the track and at the same elevation as the gage line) of its guard rail or guarding face, measured across the track at right angles to the gage line (a line $^{5}/_{8}$″ below the top of the center line of the head of the running rail, or corresponding location of the tread portion of the track structure).

The purpose of the minimum guard check gage is to ensure a vehicle's wheels are able to pass through the frog without one of the wheels (the right wheel in Figure 1) striking the frog point. In Figure 1, there are two key dimensions: ''wheel check,'' which is the distance between the two wheels plus the wheel flange thickness at the gage line ($^{5}/_{8}$″ below the running surface); and ''guard check gage,'' which is defined above. As illustrated in Figure 1, guard check gage must be greater than or equal to the wheel check so there will be a ''flange-frog point gap'' between the right wheel and frog point interface, when the left wheel flange passes against the guard rail. As stated above and further illustrated in Figure 1, this ensures the right wheel does not strike the frog point.

Figure 1 depicts a standard frog, which has a standard guard check gage of 54.625″, meeting the requirement for Class 5 track (greater than or equal to 54½″ or 54.5″). A heavy-point frog has a standard guard check gage of 54.4531″,

which does not meet current FRA standards for Class 5 track but does meet the current standards for Class 4 track (greater than or equal to 54.375″).

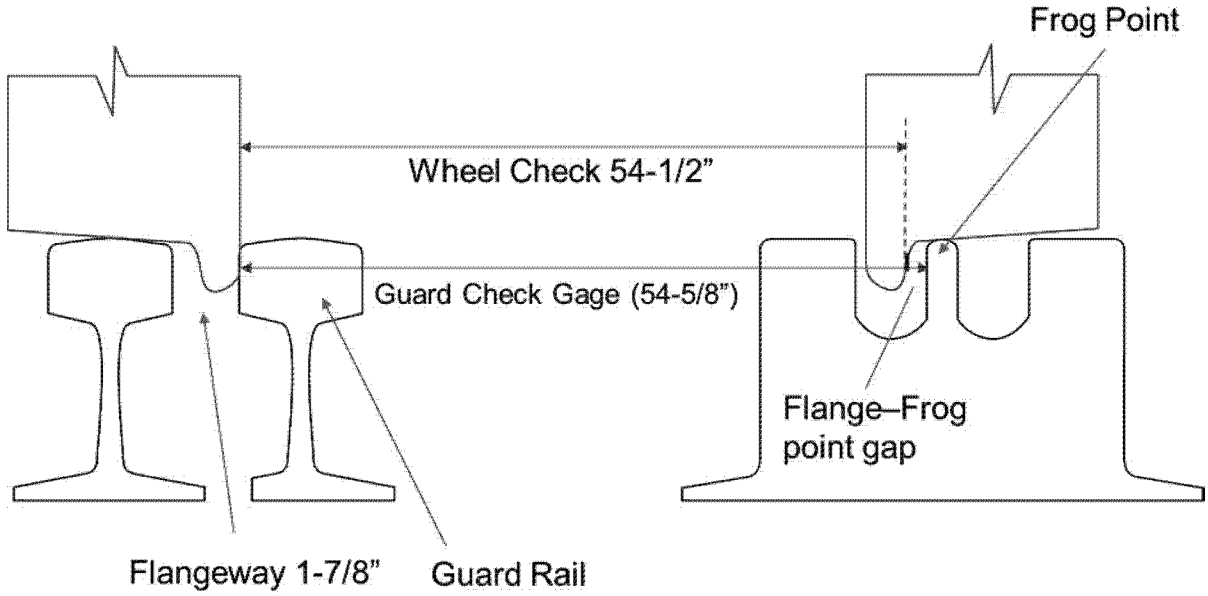

Figure 1

In 2003, FRA approved a waiver permitting operation of trains at Class 5 track speeds over certain HPFs at which the guard check gage, under existing 49 CFR 213.143, conforms to the standards applicable to Class 4 track. *See* docket number FRA–2001–10654 (available online at *www.regulations.gov*). Among other conditions to ensure safety, the waiver requires that the frog, and the guard rails on both tracks through the turnout containing the frog, be equipped with at least three through-gage plates (metal plates underneath the frog that expand across the entire frog to provide both vertical support and lateral restraint for the frog components) with elastic rail fasteners and guard rail braces that permit adjustment of the guard check gage without removing spikes or other fasteners from the crossties. The waiver also requires that track owners retain records of the location and description of each turnout containing an HPF, notify FRA prior to operating trains over a new HPF, and provide proper information and training to any employees designated to inspect or supervise restoration or renewal of areas containing an HPF. Each HPF must also bear an identifying mark. Since FRA initially granted the waiver in 2003, FRA has renewed the waiver three times, most recently on February 15, 2018. The waiver is currently set to expire on February 15, 2023.

To date, no accidents have been reported to FRA as having occurred at or near locations where HPFs are installed. Accordingly, FRA believes that the safety benefits of HPFs have been proven. As discussed in more detail below in the section-by-section analysis for § 213.143, FRA proposes to incorporate the waiver provisions into the regulation.

ii. Flange-Bearing Frog Crossing Diamonds

Flange-bearing frogs (FBF) are different from the traditional tread-bearing frogs used by freight railroads in most crossing diamonds and turnouts in the United States. In traditional tread-bearing crossing diamonds, a vehicle's wheels must run over the gaps in the running rails. This creates significant dynamic loading that can damage both the diamond and components of the vehicle (*e.g.,* the vehicle's wheels and axles). For FBFs, the flangeway is designed to support the wheels running on their flanges. There are ramps to provide a smooth transition from tread-bearing to flange-bearing and significantly reduce the dynamic wheel forces. This can greatly reduce noise and vibration, increase the service life of crossing diamonds and vehicle components, reduce the need for maintenance, and possibly decrease the need for speed restrictions in certain circumstances due to worn, damaged, or defective crossing diamonds.

In 2000, FRA approved a waiver granting relief from the flangeway depth requirements in 49 CFR 213.137(a) as well as the limitation in 49 CFR 213.137(d) restricting FBFs to Class 1 track. *See* docket number FRA–1999–5104 (available online at *www.regulations.gov*). Among other conditions, this initial waiver allowed track owners to install up to five FBF crossing diamonds in Class 2 or 3 track. FRA limited its initial approval to five FBF crossings under specific operational conditions and conditions requiring vehicle and track inspections designed to closely monitor the performance of the FBFs. In 2010, based on the successful implementation of the initial waiver and data gathered as a result, at industry's request, FRA granted a revised waiver allowing installation of FBF crossing diamonds on Classes 2 through 5 track with crossing angles above 20 degrees unless movable guard rails are used. Among other conditions, the waiver required that newly installed FBF crossing diamonds be inspected daily during the first week of operation, weekly for the month after, and monthly thereafter. The waiver also required the track owner to prepare maintenance manuals and properly train its personnel. The waiver was renewed in September 2015, and is set to expire in September 2020.

To date, no accidents have been reported to FRA as having occurred at or near FBFs. Accordingly, FRA believes that the safety benefits of FBFs have been proven and proposes to incorporate the waiver provisions into the regulation. Because the performance of the FBF crossing diamonds installed under the waiver is the primary basis for FRA's conclusion that these frogs are safe, FRA believes that it is in the best interests of public safety to retain, as much as reasonably possible, similar limitations imposed under the waiver.

V. Section-by-Section Analysis

FRA seeks comments on all proposals made in this NPRM.

Section 213.1 Scope of Part

Section 213.1 sets forth the scope of part 213. Paragraph (b) specifies that subparts A through F of part 213 apply to track Classes 1 through 5 and that subpart G and certain individual sections of subpart A apply to track Classes 6 through 9. FRA proposes to amend paragraph (b) of this section to reference proposed § 213.240 (continuous rail testing). Together with proposed § 213.240, this change would allow track owners to elect to use continuous rail testing conducted under § 213.240 on Class 6 through Class 9 track to satisfy the requirement for internal rail testing under § 213.339.

Section 213.5 Responsibility for Compliance

Section 213.5 specifies the parties responsible for compliance with part 213. Paragraph (a)(3) of this section addresses persons responsible for overseeing operations over track that is known to be not in compliance with part 213. That paragraph requires operations over such track to be overseen by a person designated under § 213.7(a) who has ''at least one year of supervisory experience in railroad track maintenance.'' FRA is proposing to remove the requirement for the person overseeing operations on non-compliant track to have ''one year of supervisory experience in railroad track maintenance.'' This proposed change would conform to the proposed changes to § 213.7, which are discussed below.

Additionally, FRA proposes to add the following sentence to the end of paragraph (a)(3): ''If the operation is on Continuous Welded Rail (CWR) track, the person under whose authority operations are conducted must also be designated under § 213.7(c).'' This change is meant to clarify that in order for a person to authorize operations over CWR track that does not meet all the requirements of part 213, the person must be designated and qualified by the track owner under § 213.7(c) to inspect CWR track or supervise the installation, adjustment, and maintenance of CWR track.

Following issuance of a final rule, FRA will issue a schedule of civil penalties to provide guidance on penalties for violations of new and amended section of part 213. This guidance will be available on FRA's website at *www.fra.dot.gov.* Because such penalty schedules are statements of agency policy, notice and comment are not required prior to their issuance. *See* 5 U.S.C. 553(b)(3)(A). Nevertheless, commenters are invited to submit suggestions to FRA describing the types of actions or omissions for each proposed or amended regulatory section that would subject a person to the assessment of a civil penalty. Commenters are also invited to recommend what penalties may be appropriate, based upon the relative seriousness of each type of violation.

Section 213.7 Designation of Qualified Persons To Supervise Certain Renewals and Inspect Track

Section 213.7 requires track owners to designate qualified persons to inspect track and supervise certain track restorations and renewals, and specifies the records related to these designations a track owner must maintain. The section also requires these qualified persons to have ''written authorization'' from the track owner to prescribe remedial actions to address identified nonconformities in the track. Paragraph (a)(1) of this section specifically requires that a person designated to supervise the restoration and renewal of track under traffic conditions have, among other things, either one year of supervisory experience in railroad maintenance or a combination of supervisory experience in track maintenance and training. During the TSS Working Group meetings, some members expressed the view that the requirement for supervisory experience in paragraph (a)(1) was unreasonable. Those members asserted that as written, an employee cannot be qualified to supervise restoration and renewal of track under paragraph (a)(1) unless he or she has supervisory experience in track maintenance, yet the employee may only be able to gain supervisory experience if he or she is first considered qualified under paragraph (a)(1). FRA agrees that requiring supervisory experience to qualify under paragraph (a)(1) creates a possible conflict in the regulatory language and proposes to remove the supervisory requirement in the paragraph.

Paragraphs (a)(3), (b)(3), and (c)(4) each require that a qualified person possess ''[w]ritten authorization from the track owner to prescribe remedial actions.'' Although FRA believes that the term ''written'' can be interpreted to encompass both physical hardcopies of an authorization as well as electronic authorizations, to avoid any possible confusion, consistent with the TSS Working Group's recommendation, FRA proposes to remove the term ''written'' from each of these paragraphs. The change would make clear that the required authorizations may be recorded and conveyed either in hardcopy or electronic form.

Existing paragraph (e) of this section requires track owners to maintain ''written records'' of each designation in effect and the basis for that designation. Consistent with the proposed revisions to paragraphs (a)(3), (b)(3) and (c)(4), FRA proposes to revise this paragraph to remove the requirement to maintain ''written'' records. Records of designations made under § 213.7 can be either in hardcopy or electronic form. FRA proposes to add new paragraph (e)(2) to require records of designations under § 213.7 to include the date each designation is made. TSS Working Group members expressed the view that the date of an individual's designation is relevant and important information both to the track owner and to FRA, and FRA believes most, if not all, track owners already include this in their designation records. To incorporate this proposed revision, existing paragraph (e)(2) would be redesignated as paragraph (e)(3) and revised to require records to contain not only the basis for each designation as existing paragraph (e)(2) currently requires, but also to require track owners to include the method used to determine that the designated person is qualified. This change is intended to better conform with the requirements of existing § 213.305(e) for high-speed operations, and better describe what FRA means by the ''basis for each designation.'' To meet this requirement, a track owner could include information about the nature of any training courses the designated person participated in and how the track owner determined that the designated person successfully completed the course (*e.g.,* test scores, demonstrated proficiency, etc.).

Existing paragraph (e)(3) also requires designation records under § 213.7 to include records of track inspections ''made by each designated qualified person.'' FRA proposes to remove the requirement as FRA finds it to be redundant when considering the current requirements of § 213.241, Inspection

records. Under existing § 213.241, track owners are required to maintain records of track inspections made by qualified inspectors and make those records available to FRA. Accordingly, existing paragraph (e)(3) would be redesignated as new paragraph (f) and revised. As under the existing regulation, a track owner would be required to make the records kept under paragraph (e) available for inspection and copying by FRA. FRA proposes rephrasing the paragraph to require that FRA make its request for records during normal business hours and provide the track owner ''reasonable notice'' before requiring production. The meaning of the term ''reasonable notice'' depends on the specific facts of each situation (*e.g.,* time of day, day of the week, number of records requested, etc.). FRA does not intend these revisions to substantively change recordkeeping requirements or FRA's existing inspection practices. These revisions are primarily intended to clarify how FRA currently enforces the regulation.

Section 213.9 Classes of Track: Operating Speed Limits

Section 213.9 sets forth the maximum allowable operating speeds for both passenger and freight trains for excepted track, and track Classes 1 through 5 (track speeds up to 90 miles per hour for passenger trains and up to 80 mph for freight trains). Paragraph (b) of this section addresses situations in which a track segment does not meet the requirements for its intended class and specifies that if a segment of track does not at least meet the requirements for Class 1 track, operations may continue under the authority of a person designed under § 213.7(a) ''who has at least one year of supervisory experience in railroad track maintenance'' for up to 30 days. Consistent with the revisions proposed to § 213.7(a), FRA proposes to revise this paragraph to remove the requirement that a person designated under § 213.7(a) have a least one year of ''supervisory'' experience in railroad track maintenance. Please see the above discussion of § 213.7(a).

Section 213.11 Restoration or Renewal of Track Under Traffic Conditions

Existing § 213.11 requires operations over track undergoing restoration or renewal under traffic conditions and not meeting all the requirements of part 213 to be conducted under the continuous supervision of a person designated under § 213.7(a) with ''at least one year of supervisory experience in railroad track maintenance.'' Consistent with the proposed changes to § 213.7(a), FRA proposes to remove the requirement that the person supervising restoration or renewal of track under traffic conditions have a minimum of one year of ''supervisory'' experience in track maintenance. Additionally, FRA proposes to add the requirement that if the restoration or renewal is on continuous welded rail (CWR) track, the person must also be qualified under § 213.7(c). Because § 213.7 already requires that anyone designated under § 213.7(a) or (b) who inspects or supervises maintenance of CWR track must also be designated under § 213.7(c), this change to § 213.11 is simply a clarifying revision that restates the existing regulatory requirement.

Additionally, FRA proposes adding a sentence stating the ''operating speed cannot be more than the maximum allowable speed under § 213.9 for the class of track concerned.'' This is meant to clarify that the person designated under § 213.7(a), and (c) if applicable, may not authorize movement over the track the person is supervising at speeds greater than the maximum allowable operating speed for the class of track concerned.

Section 213.113 Defective Rails

Section 213.113 prescribes the required actions that must be taken when a track owner learns that a rail contains an indication of a defect and after the track owner verifies the existence of the defect. FRA proposes to modify the second sentence in paragraph (b) so that it begins with ''except as provided in § 213.240, ...'' This change is simply meant to clarify that the requirement that an indication of a defect be verified within four hours would not apply if a track owner elects to conduct continuous testing under proposed § 213.240.

Section 213.137 Frogs

Section 213.137 contains the standards for use of frogs. Existing paragraph (a) prescribes limits on the flangeway depth of a frog. On June 27, 2000, FRA granted a waiver (docket number FRA–1999–5104) to members of the railroad industry allowing the installation of flange-bearing frogs (FBFs) used in crossing diamonds in track Classes 2 through 5, and exempting those diamonds from the flangeway depth requirements of paragraph (a), subject to certain conditions. As discussed in more detail in section II.C of this NPRM, the waiver was renewed multiple times, most recently on September 17, 2015, and will expire on September 17, 2020. After careful review of safety performance under the waiver and analysis of track-caused derailments, FRA has not identified any negative safety implications for use of FBFs.

Based on the above, as well as the discussion in section II.C of this NPRM, FRA proposes to modify § 213.137 by adding paragraph (e) and allowing the use of FBFs in crossing diamonds in Classes 2 through 5 track consistent with the conditions of the existing waiver.[2] Because the performance of the FBFs installed under the waiver is the primary basis for FRA's conclusion that these crossing diamonds are safe, FRA believes that it is in the best interests of public safety to retain, as much as reasonably possible, the same limitations imposed under the waiver.

The limitation in proposed paragraph (e)(1) would require the crossing angle to be greater than 20 degrees unless movable guard rails are used. When a crossing diamond has a smaller crossing angle, there is a heightened risk of damage to the rail head when the wheel flange crosses over it. Proposed paragraph (e)(2) would require that the track owner document the location, crossing angle, tonnage, speed, direction, and type of traffic for each FBF utilized under paragraph (e). Type of rail traffic means passenger, freight, and hazardous material. This information would be required to be made available to FRA upon request following reasonable notice during normal business hours.

Proposed paragraph (e)(3) would require the track owner to prepare a maintenance manual for FBFs in crossing diamonds and make copies of that manual available to all personnel responsible for inspecting or repairing any such FBFs. Proposed paragraph (e)(3) would also require that all personnel responsible for inspecting or repairing any FBF in a crossing diamond be properly trained. FRA does not specify what must be included in the maintenance manuals or covered in the training. Instead, FRA expects that a manual would include all necessary information relevant to the successful inspection and maintenance of an FBF and organized in a manner that allows the person performing the inspection or maintenance, or both, to find the information in a timely fashion. Maintenance manuals can be prepared by entities other than the track owner (*e.g.,* the manufacturer of the FBF or the railroad). Training must be of a sufficient duration and quality to ensure the trainee has a sufficient understanding to properly inspect and maintain FBFs. Additionally, the railroad or track owner must ensure that

[2] As noted above, § 213.137(d) already allows the use of FBFs in Class 1 track.

the trainee is actually ''trained.'' This could be accomplished, for example, through testing, on-the-job mentoring, or any other means sufficient to demonstrate that the trainee fully understands and retains the information necessary to properly inspect and maintain FBFs. FRA invites comment on whether FRA's intent to implement the rule in this manner and the proposed meaning of the terms used in paragraph (e)(3) should be defined in the rule text.

FRA has not proposed to adopt the condition, included in the waiver, mandating an increased inspection frequency for FBFs. Under the waiver, track owners are required to inspect a newly-installed FBF daily during the first week of operation, and weekly for the month thereafter. Since FBFs have been proven safe under the long-standing waiver and the waiver has produced no data that FRA is aware of indicating a higher likelihood for defects in newly-installed FBFs when compared to traditional frogs, FRA does not believe these increased inspections are warranted and has not proposed to include that condition. FRA invites comment on whether this condition should be included in the final rule and, if so, any data that would justify such inclusion.

Section 213.143 Frog Guard Rails and Guard Faces; Gage

This section prescribes a minimum and maximum value for guard check and guard face gages, respectively. Guard check gage is the distance between the gage line of a frog and the guard line of its guardrail or guarding face. Allowable minimum dimensions vary with track classification, *i.e.,* train speed.

As discussed in more detail in section IV.C of this NPRM, in 2003, FRA granted a waiver (docket number FRA–2001–10654) to members of the railroad industry allowing operation of trains at Class 5 speeds over a heavy-point frog (HPF) with guard check gages conforming to the standards for Class 4 track frogs. FRA granted three extensions of this waiver, most recently on February 15, 2018, and it will expire on February 15, 2023. After careful review of safety performance under the waiver and analysis of track-caused derailment data, FRA believes that the safety case has been proven and proposes to incorporate the waiver provision into the regulation. Because the performance of the HPFs installed under the waiver is the primary basis for FRA's conclusion that these frogs are safe, FRA believes that it is in the best interests of safety to retain, as much as reasonably possible, the same limitations imposed under the waiver.

Consistent with the conditions of the existing waiver, FRA proposes the addition of footnote 3 to the table in § 213.143, which would allow the guard check gage for HPFs on Class 5 track to be less than the current 4 feet, $6^1/_2$-inch minimum, but not less than 4 feet, $6^3/_8$ inches (the current minimum for frogs in Class 4 track). Proposed paragraph (a) of footnote 3 would require that each track owner maintain records of the location and description of each HPF and make that information available to FRA upon request during normal business hours following reasonable notice. Proposed paragraph (b) of footnote 3 would require that each HPF and guard rails on both rails through the turnout be equipped with at least three serviceable through-gage plates with elastic rail fasteners and guard rail braces that permit adjustment of the guard check gage without removing spikes or other fasteners from the crossties.

Proposed paragraph (c) of footnote 3 would require that each track owner provide proper maintenance manuals, instructions, and training to any § 213.7 designated employees who inspect track or supervise restoration and renewal of track, or both, in areas that include turnouts with HPFs. As with the proposed revisions to § 213.137, FRA does not specify what must be included in the maintenance manuals or covered in the training. Instead, FRA expects that a manual will include all necessary information relevant to the successful inspection and maintenance of an HPF and organized in a manner that would allow the person performing the inspection or maintenance, or both, to find the information in a timely fashion. Maintenance manuals can be prepared by entities other than the track owner (*e.g.,* the manufacturer of the HPF or the railroad). Training likewise must be of a sufficient duration and quality to ensure the trainee has a sufficient understanding to properly inspect and maintain HPFs. Additionally, the track owner must ensure that the trainee is trained. This can be accomplished, for example, through testing, on-the-job mentoring, or any other means sufficient to demonstrate that the trainee fully understands and retains the information necessary to properly inspect and maintain HPFs. FRA invites comment on whether FRA's intent to implement the rule in this manner and the proposed meaning of the terms used in paragraph (c) should be defined in the rule text.

Finally, proposed paragraph (d) of footnote 3 would require that each HPF bear an identifying mark that identifies the frog as an HPF. This mark can be applied by the track owner, railroad, or the HPF manufacturer. The mark used must be described in the instructions given to the employees discussed in proposed paragraph (c). The identifying mark must be of a type and size, and in a location, that will allow the employees to quickly and effectively determine that it is an HPF.

Section 213.233 Visual Track Inspections

Section 213.233, currently titled ''Track inspections,'' sets forth general requirements for the frequency and method of performing required visual track inspections on excepted track and track Classes 1 through 5. To better reflect the scope of this section, FRA proposes to add the word ''visual'' to the section heading so that it would read ''Visual track inspections.'' No substantive change is intended. Because other sections in part 213 for these track speeds cover different types of inspections and inspection methods (*e.g.,* automated inspections, inspections of rail, etc.), this proposed change would clarify that this section deals specifically with visual track inspections. This proposal is also consistent with the current heading for the corresponding high-speed track section, § 213.365, ''Visual inspections.'' As discussed below, FRA proposes to revise the heading for § 213.365 so that the headings are the same for both §§ 213.233 and 213.365.

Paragraph (b) of this section requires visual track inspections to be made on foot or by ''riding over'' the track at a speed allowing the inspector to visually inspect the track structure for compliance; and, when inspecting from a vehicle, this section sets the vehicle's maximum speed at 5 m.p.h. when ''passing over'' track crossings and turnouts. Paragraph (b) also specifies that one inspector in a vehicle may inspect up to two tracks at one time under certain conditions, including that the second track is not centered more than 30 feet from the track upon which the inspector ''is riding.'' Similarly, two inspectors may inspect up to four tracks from one vehicle under certain conditions, including that the second track center is within 39 feet from the track on which the inspectors ''are riding.'' For grammatical consistency throughout this section, FRA proposes revising the terms ''riding over'' and ''passing over'' to ''traversing'' in this paragraph and, for the same reason, FRA is also proposing to revise the terms ''is riding'' and ''are riding'' to ''traverses'' and ''traverse.''

Additionally, FRA proposes removing the terms ''upon which'' from paragraphs (b)(1) and (2), and changing ''is actually'' to ''must be'' in paragraph (b)(3). These changes are not meant to affect the meaning of § 213.233, but are instead made for grammatical consistency.

As discussed in more detail above in section IV.B of this NPRM, FRA proposes to remove the last sentence of paragraph (b)(3), also known as the high-density commuter line exception. Paragraph (b)(3) requires, among other things, that each main track be traversed by a vehicle or inspector on foot at least once every two weeks, and every siding at least every month. The high-density commuter line exception currently applies where track time does not permit on-track vehicle inspection and where track centers are 15 feet or less apart and exempts those operations from the inspection method requirements of paragraph (b)(3). FRA's proposal to remove this exception is directly responsive to Congress's direction in sec. 11409 of the FAST Act and NTSB's Safety Recommendation R–14–11. In addition, FRA understands that no track owner currently utilizes this exception, so its removal will have little to no impact on the regulated industry.

FRA proposes three revisions to paragraph (c). First, FRA proposes to add the word ''visual'' before ''track inspection'' in the introductory text. This is simply to make paragraph (c) consistent with the new heading for § 213.233 and has no effect on the meaning of paragraph (c). Second, FRA proposes adding footnote 1 after the word ''weekly'' in the table in paragraph (c). The proposed footnote defines the term ''weekly'' to be a seven-day period beginning on Sunday and ending on Saturday. This definition is consistent with FRA's past interpretation and enforcement practice, as well as FRA's public guidance included in Volume II, Chapter 1, of the Track and Rail and Infrastructure Integrity Compliance Manual, March 1, 2018, available on FRA's public eLibrary website (*https://www.fra.dot.gov/eLib/Find*).

Third, FRA proposes to add footnote 2 after the term ''passenger trains'' in the table in paragraph (c). The proposed language was suggested to the TSS Working Group by the Rail Heritage Association and FRA agrees that it would reduce unnecessary burden on certain regulated entities while not negatively impacting safety. This proposed footnote would exempt, in two situations, entities from the required twice-weekly inspection requirement for track carrying passenger trains if the passenger train service consists solely of tourist, scenic, historic, or excursion operations as defined in 49 CFR 238.5. In the first situation, this exemption would apply where no passenger service is operated over the track during the inspection week. In the second situation, this exemption would apply where passenger service is operated during the inspection week but only on a weekend (Saturday and Sunday) or a 3-day extended weekend (Saturday and Sunday plus either a contiguous Monday or Friday) and an inspection is conducted before, but not more than one day before, the start of the weekend or 3-day extended weekend.

FRA also proposes to revise paragraph (d). Specifically, FRA proposes the addition of the phrase ''the § 213.7 qualified'' at the beginning of the paragraph to clarify that ''the person'' making the inspection that the existing rule text refers to is the qualified track inspector designated under § 213.7. Additionally, FRA proposes adding a sentence at the end of paragraph (d) stating that any subsequent movements to facilitate repairs on track that is out of service must be authorized by a § 213.7 qualified person. This section is silent as to whether or when movement over track that is out of service is permissible. FRA recognizes that certain movements are necessary to facilitate repairs and therefore does not interpret or enforce the current regulatory language to bar such movements of equipment and materials on track that is out of service. The proposed revision is meant to embody that practice and interpretation and prevent possible confusion.

Section 213.240 Continuous Rail Testing

FRA proposes to add this new section to allow track owners to satisfy the requirements for internal rail inspections under § 213.237, or § 213.339 (for Class 6 track and higher), using continuous rail testing. This proposed section would allow for greater flexibility in the rail flaw detection process and additional time to analyze the data collected during continuous rail testing and field-verify indications of potential rail flaws. This additional time allotment would allow for improvements in planning and execution of rail inspections and rail defect remediation, thereby lessening the impact on rail operations. As a result, more track time should become available to conduct maintenance and increase inspections. However, as continuous testing is a more complex process compared to the traditional stop-and-verify rail inspection, certain conditions must be met to ensure that this elective process is conducted properly and provides sufficient recordkeeping and transparency to allow for adequate oversight by FRA.

The continuous rail test method consists of a vehicle using ultrasonic testing, in some cases augmented by other flaw detection systems, to detect defects in the rail. The raw test data is transmitted from the vehicle to a centralized location to be analyzed by a team of experts, using multiple advanced techniques, including comparison to past data from the same location (sometimes referred to as ''change detection''). Once analyzed, suspect locations (locations where the data indicates the possible presence of a rail defect) are then transmitted back to the field for on-site verification to determine if an actual rail flaw exists.

Under existing § 213.113(b), when a track owner learns that a rail contains an indication of one of the defects listed in the table in § 213.113(c), the track owner must field-verify the indication within four hours. Proposed § 213.240 would exempt track owners who elect to utilize continuous rail testing from the requirement to field-verify the indication within four hours. This increased verification period is justified by the logistical and safety benefits of continuous rail testing. Because the test vehicle does not have to stop and verify each suspected defect, more track can be inspected at greater speeds with significantly less interruption to revenue service. The more time-consuming analysis of the test data can be conducted at an off-site location and reviewed at an optimal speed not related to the speed of the test vehicle. Additionally, the test data can be more thoroughly compared to past test runs over the same section of track to better identify possible defect propagation and growth. The decreased interruption to revenue service would also allow track owners to test track more frequently. FRA believes that continuous rail testing would substantially decrease the overall cost to the railroad industry while not negatively affecting safety.

As noted in section IV.A above, since 2009, a number of railroads have implemented continuous rail testing programs through limited, conditional waivers of 49 CFR 213.113(b). That section requires track owners, who learn that a rail in their track contains an indication of a defect listed in the table in § 213.113(c), verify the indication within four hours and take remedial action in accordance with the table. The remedial action table in § 213.113(c) prescribes the required remedial actions

(and timelines for taking those actions) based on the severity of the defects identified. In other words, based on the size and severity of specific types of defects, there is a built-in safety threshold in the remedial action table for each known defect depending on the defect type and size. Generally, the waivers FRA has granted to date allowing railroads to conduct continuous rail testing programs provide railroads with a longer period of time to verify indications of defects than permitted by § 213.113(b), and allow railroads to prioritize the verification and remediation of those defects based on the severity of the indications and defects identified. Suspect indications of defects are not prioritized arbitrarily, but are put into categories based on ultrasonic reflective responses as viewed by the analyst.

Under the continuous rail test process, analysts interpret the collected ultrasonic reflective responses, which allows them to estimate the defect type and size. As explained in more detail below, when these responses indicate a suspected defect above the threshold that, if verified, would require remedial action note ''A,'' ''A2,'' or ''B'' under the table contained in § 213.113(c), that suspect location must be field-verified within the timeframe listed in proposed § 213.240(e)(2), and is commonly referred to in the industry as a ''priority one.'' The ''A,'' ''A2,'' and ''B'' remedial actions are required when a defect is at or above a specific size as outlined in the table in § 213.113(c).

Those suspected defects that, if verified, would not require remedial actions ''A,'' ''A2,'' or ''B,'' must be field-verified within the timeframe listed in proposed § 213.240(e)(1), and are commonly referred to in the industry as either a priority two or a priority three, depending on the clarity of the indication. Often, when the ultrasonic test data produces a response where the analyst believes a defect is present because of the strength of the ultrasonic reflective signal, but that signal does not indicate a suspect defect of the type and/or size requiring remedial action ''A,'' ''A2,'' or ''B,'' the track owner lists the indication as a priority two. All other suspect locations identified by the analyst as potential defects or questionable ultrasonic responses are often marked as priority three suspect locations by the track owner. These so-called priority threes are indications where the ultrasonic reflective data does not produce a clear indication of defect type or size, but produces an unfamiliar or questionable response. Since many variables affect ultrasonic responses, the priority three suspect type is the most commonly used since it requires the hand verifier to check that location to ensure nothing is being missed or misinterpreted that might result in a rail failure and subsequent derailment.

The § 213.113(c) remedial action table reflects the fact that all verified defects pose a potential risk of sudden failure, depending on conditions, even with defects deemed to be less severe than others. Regardless of the defect size and type, once a rail failure occurs, there is a potential for a catastrophic accident. Data from the existing waivers demonstrates that, while less than 2% of the suspected priority three defects are found to be actual rail defects, priority three defects account for approximately 85% of the field-verified defects marked and removed from the tracks as a result of continuous testing. Thus, while priority three defects have a much higher probability of a false positive, they are also by far the most common indication of an actual defect. Accordingly, FRA believes that safety necessitates continuing to require the field verification of all defects identified by tests carried out under § 213.237 or § 213.239.

FRA requests comment, however, on the feasibility and desirability of establishing a generally applicable, performance-based requirement differentiating different categories of defects and appropriate field verification and remediation requirements, and whether there are any types of defects that should be exempted from field verification and/or remediation requirements.

Proposed paragraph (a) would allow track owners to use continuous rail testing instead of complying with § 213.113(b), provided the track owner complies with the minimum requirements of § 213.240. Proposed paragraph (a) also makes clear that the track owner must still comply with all other requirements of § 213.113, as well as all requirements of proposed § 213.240. Specifically, proposed § 213.240 would not make any changes to the remedial action(s) a track owner must take after field verification of a suspect location determines a rail defect does exist. In other words, § 213.240 provides additional time to field-verify a defect, but once verified, the track owner must immediately take appropriate remedial action as described in § 213.113(c).

Proposed paragraph (b) outlines the minimum procedures that a track owner must adopt to conduct continuous rail testing under § 213.240. Prior to starting a continuous testing program, a track owner must adopt procedures that comply with this section. Rail testing is vital to the prevention of track-caused accidents, and documented procedures are necessary to ensure continuous rail testing works consistently and effectively, and that those involved understand their responsibilities and have a resource they can consult if they have any questions. These minimum procedures are designed to allow each track owner flexibility in determining the best approach to conduct continuous testing.

Proposed paragraph (b)(1) would require continuous rail testing procedures address how test data will be transmitted and analyzed. This would include how the test data is transmitted from the test vehicle to the offsite facility for analysis and how the analyzed test data and findings are to be transmitted to those responsible for field verification and remediation. The procedures must also cover how the data is to be analyzed, including comparing the test data to data from prior test runs. The provision is intentionally general to allow track owners to tailor their procedures to their own circumstances and gives the necessary flexibility for those procedures to be revised as new information and technology becomes available. The lines of communication and means of analysis must be covered in the track owner's procedures so that the parties involved understand the process. This is vitally important because an error in how the data is transmitted or analyzed can result in a rail defect going undetected or unaddressed, potentially causing a derailment.

Proposed paragraph (b)(2) would require continuous rail testing procedures address how suspect locations are to be identified for field verification. As discussed in greater detail below, proposed paragraphs (e) and (f) would require the suspect location be identified and recorded in a manner that allows the qualified person under § 213.238 to accurately locate the suspect location with repeatable accuracy during field verification. Proposed paragraph (b)(2) requires the continuous rail testing procedures cover how that is to be done—for example, what information will be provided to the personnel responsible for field verification (*e.g.* GPS coordinates) and, if necessary, what steps must those personnel take to ensure they accurately use that information depending on the actual field conditions. Additionally, FRA understands that some entities currently performing continuous testing may require field-verifiers to coordinate with the person who conducted the

analysis of the test data for certain categories of defects to ensure they accurately locate the suspect location. Track owners that adopt such a practice must include it in their procedures.

Proposed paragraph (b)(3) would require the procedures discuss how suspect locations will be categorized and prioritized according to their potential severity. As noted below, proposed paragraph (e) includes different time limits for field verification of suspected defects depending on their type. Proposed paragraph (b)(3) requires the track owner's procedures cover how those different categories of suspected defects will be designated as well as any additional categorization, or sub-categories, that the track owner decides to use. This would include what terminology the track owner decides to use for the different categories, and is necessary so that all parties involved can understand the reports and documentation created by the continuous testing process.

Proposed paragraph (b)(4) would require the procedures address how suspect locations will be field-verified, and is necessary so those responsible for field verification understand what they must do. Accurate field verification is a vitally important part of continuous testing, and rail testing in general, because it is the process by which the track owner determines whether a rail defect exists or not, and if so, how serious. As with all the minimum procedures in proposed paragraph (b), the provision is intentionally general and intended to give flexibility to the track owner to determine how best to effectively field-verify. New research and technology may change how field verification is conducted, and this provision is intended to allow the procedures to be revised accordingly.

Proposed paragraph (b)(5) would require continuous testing procedures cover how suspect locations will be designated following field verification. The designation of suspect locations following field verification should, at minimum, allow the reviewing individual to determine the outcome of the field verification and, if a rail defect was found, the type and size of the defect. In other words, proposed paragraph (b)(5) would require the procedures explain the process for how the results of field verification will be recorded and the terminology used by the track owner to note the outcome and findings. If field verification does not confirm a defect exists at a suspect location, the designation may specify the reason(s) why the continuous test data indicated a suspect location (*e.g.,* the presence of a surface condition).

Proposed paragraph (c) would require the track owner to designate and record the type of rail test to be conducted, whether continuous or stop-and-verify, prior to commencing the testing. Track owners may elect to conduct continuous testing in conjunction with stop-and-verify rail testing. However, a determination must be made prior to commencement of the test as to which type of test will be conducted on a given section of track, and that decision must be properly documented to ensure that the effectiveness of the inspection can be adequately evaluated for efficacy and reporting requirements. If the type of rail testing changes after the test has been commenced, the track owner must document that change, including the time the test was initially started, the time it was changed, the milepost where the test started, the milepost where the test changed, and the reason for the change. These records must be made available to FRA upon request during regular business hours following reasonable notice. To conduct oversight and ensure safety, FRA must know the type of test utilized on a section of track, because the type of test will dictate both the necessary procedures and, more importantly, the required time period for field verification of a suspected defect.

Additionally, proposed paragraph (b)(1) would require that at least 10 days prior to commencement of a continuous rail test, the track owner must designate and record whether the test is being conducted to satisfy the requirement for an internal rail inspection under § 213.237, or § 213.339 where applicable. As discussed in greater detail above, track owners are required to conduct a sufficient number of internal rail inspections to satisfy the requirements of § 213.237, or § 213.339 where applicable. A continuous rail test conducted to meet the minimum number of required internal rail inspections must comply with proposed § 213.240, including the field verification requirements under proposed paragraph (e). Track owners are of course permitted to conduct continuous rail tests above and beyond the minimum requirements of § 213.237, or § 213.339 where applicable. Those additional rail tests (that are not intended to meet the minimum number required by § 213.237, or § 213.339 where applicable), are not required to meet the requirements of proposed § 213.240, and the track owner therefore cannot rely on such tests to demonstrate compliance with either § 213.237 or § 213.339. As such, the track owner must designate and record whether the test is being conducted to satisfy the minimum frequency requirements of § 213.237, or § 213.339 where applicable, at least 10 days in advance of the test so that FRA can conduct oversight and ensure the proper procedures are being followed.

Proposed paragraph (d) lists required qualifications for certain persons involved in key aspects of the continuous testing program. Proposed paragraph (d)(1) would require that an operator of a continuous rail test vehicle be qualified under § 213.238. Section 213.238 lists the qualification requirements for operators of rail test vehicles conducting stop-and-verify rail testing. FRA believes that the same qualification requirements should apply to operators of continuous test vehicles because, like operators of stop-and-verify test vehicles, they must ensure that the vehicles conduct a valid search and function as intended, be able to interpret relevant equipment responses, and determine that a continuous valid search has been conducted.

Proposed paragraph (d)(2) would require that the internal rail inspection data be reviewed and interpreted by a person qualified to interpret the equipment responses. FRA is intentionally not proposing specific qualification requirements but instead proposes to leave it up to the track owner to ensure the necessary procedures are in place for its specific system so that the persons reviewing and interpreting the data have been properly trained and tested. An analyst may not necessarily need to have intimate knowledge of the inner workings of the test equipment, but must be trained on how to properly assess the equipment responses to determine when a possible rail defect exists and field verification is necessary. The track owner or a designee shall have a process in place to ensure all persons responsible for the interpretation of the data are competent and capable of that task. By using the word ''qualified,'' FRA does not simply mean that the track owner has designated an individual as qualified. To be ''qualified,'' the persons must be properly trained and tested, and thus possess the necessary knowledge and ability to accurately and competently review and interpret the rail test data and properly identify suspected rail defects.

Proposed paragraph (d)(3) requires that all suspected locations be field-verified by a person qualified under § 213.238. FRA is aware that this is the same qualification required for the continuous test vehicle operators and

believes that an understanding of the vehicle systems is necessary to accurately understanding the test data, find the suspected location, and successfully field-verify the suspected defect.

Proposed paragraph (e) would require that the continuous test process, at a minimum, produce a report containing a systematic listing of all suspected locations that may contain any defect listed in the Remedial Action Table of § 213.113(c). The suspect location must be identified with sufficient information so that a qualified person under § 213.238 can accurately locate and field-verify each suspected defect. FRA is intentionally not prescribing how a suspect location is identified and proposes to leave it up to the track owner because it may be affected by specific circumstances facing each track owner.

FRA notes that when proposed paragraph (e) is read in conjunction with proposed paragraph (f), the suspect location must be identified and recorded in a manner that allows the qualified person under § 213.238 to accurately locate the suspect location with repeatable accuracy. This could include Global Positioning System (GPS) coordinates, but for locations where GPS does not work, such as tunnels, the track owner must have another procedure in place to accurately identify the exact location of the suspected defects. FRA also recognizes that the locations likely cannot be listed with perfect accuracy and that there must be some acceptable margin of error. Although FRA does not quantify the exact size of an allowable margin of error, it cannot be of a size that would affect the ability of the qualified person under § 213.238 to accurately locate the suspected defect noted on the report. For example, if the margin of error is too large, there is the risk that the qualified person may confuse the suspected defect noted on the report with another condition present in or on the rail in the vicinity of the actual suspected defect.

Proposed paragraphs (e)(1) and (2) contain specific timeframes in which field verification of suspected locations must be conducted. For purposes of verification timeframes, the indications are classified into two categories: Those suspected defects that, if verified, would require remedial action note ''A,'' ''A2,'' or ''B'' in the Remedial Action Table; and all other defects. Additionally, indications of a possible broken rail with rail separation must be protected immediately. As discussed below, field verification would be required within 24 hours of completion of the test run for suspected defects falling into the first category and 72 hours for defects falling into the second category. Further, FRA understands that new technologies or processes may be developed that could allow for the collection of data to occur around-the-clock or for extended periods of time. Thus, FRA proposes adding an additional 12 hours to the verification time limits as the absolute maximum period within which a suspected defect must be field-verified.

Proposed paragraph (e)(1) would require, subject to the requirements of proposed paragraphs (e)(2) and (3), that the track owner field-verify any suspect location within 72 hours after completing the test run, or within 84 hours of the detection of the suspect location, whichever is earlier. This, along with proposed paragraphs (e)(2) and (3), would take the place of the current requirement that suspect locations be field-verified within 4 hours. Proposed paragraph (e)(1) would apply to any suspect location that does not indicate a broken rail with rail separation or indicate a suspected defect that, if verified, requires remedial action note ''A,'' ''A2,'' or ''B'' under the table contained in § 213.113(c). In other words, this proposed paragraph would apply to suspected defects that pose a slightly lower immediate safety risk than the ones covered in proposed paragraphs (e)(2) and (3). FRA believes allowing 72 hours from the completion of the test run, or 84 hours from detection of the suspect location, to field-verify the suspected defect would provide sufficient flexibility to conduct continuous rail testing and have the test data analyzed while also ensuring safe operations. FRA also recognizes that a single test run may span a significant distance and time. Thus, FRA proposes a maximum limit of 84 hours from detection of a suspect location to when it must be field-verified, regardless of when the test run has been officially completed.

Proposed paragraph (e)(2) would require that any suspect location containing a suspected defect that, if verified, would require remedial action note ''A,'' ''A2,'' or ''B'' under the table contained in § 213.113(c) must be field-verified no more than 24 hours after completion of the test run, or 36 hours after detection of the suspect location, whichever is earlier. The remedial action need not be the only required remedial action, just one of the options. Thus, if remedial action note ''A,'' ''A2,'' or ''B'' are listed in the remedial action column (the last column) of the table in § 213.113(c), the defects associated with those remedial actions would be covered under proposed paragraph (c)(3) and any suspect location possibly containing one of those defects must be field-verified within the time required by proposed paragraph (c)(3). Based on the table in § 213.113(c), the covered defects include:

- All compound fissures;
- Transverse fissures 60 percent or greater;
- Detail fractures 60 percent or greater;
- Engine burn fractures 60 percent or greater;
- Defective welds 60 percent or greater;
- Horizontal split head greater than 4 inches or where there is a break out in the rail head;
- Vertical split head greater than 4 inches or where there is a break out in the rail head;
- Split web greater than 4 inches or where there is a break out in the rail head;
- Piped rail greater than 4 inches or where there is a break out in the rail head;
- Head web separation greater than 4 inches or where there is a break out in the rail head;
- Defective weld greater than 4 inches or where there is a break out in the rail head;
- Bolt hole crack greater than 1.5 inches or where there is a break out in the rail head;
- Broken base greater than 6 inches; and
- Ordinary breaks.

Proposed paragraph (e)(3) would require that the track owner have procedures in place to ensure adequate protection is immediately implemented where the continuous rail test inspection vehicle indicates a possible broken rail with rail separation. FRA intentionally does not specify what needs to be included in the procedures but expects the individual track owners to determine what is appropriate for their specific operations. At a minimum, these procedures would need to include specific communication channels, open at all times continuous rail testing is conducted and data is being analyzed, among the individuals who can take the necessary steps to immediately implement adequate protection. A track owner may not wait until the suspected broken rail with rail separation is field-verified. The visual indication from the analyst alone is sufficient.

Proposed paragraph (e)(4) states that a suspected location is not considered an actual rail defect under § 213.113(c) until it has been field-verified by a person qualified under § 213.238. Thus, a track owner would not be required to implement the remedial actions listed in

the table contained in § 213.113(c) until a suspected location is field-verified, or, as provided in proposed paragraph (e)(5), the required time period to conduct field verification has elapsed. Proposed paragraph (e)(4) goes on to state that once a suspected location is field-verified and determined to be a defect, the track owner must immediately perform all remedial actions required by § 213.113(a).

Proposed paragraph (e)(5) would require that if a suspected location is not field-verified within the time required by proposed paragraph (e)(1) or (2), it must be immediately protected by applying the most restrictive remedial action outlined under the table contained in § 213.113(c) for the suspected type and size of the suspected defect. The protection must cover a sufficient segment of track to assure coverage of the suspected location until field verification. Thus, if the size of a defect is not immediately clear, the protection must provide a safety margin and cover a larger segment of track to ensure the limits of the suspected defect are included in the protection.

Proposed paragraph (f) would require that each suspect location be recorded with repeatable accuracy that allows for the location to be accurately located for subsequent field verification and remedial action. As the continuous testing process allows track owners to conduct field verifications well after the inspection equipment traverses a track segment, it is critical that each suspect location be accurately identified. A cornerstone of the entire process is that each suspect location is recorded with repeatable accuracy such that true and valid field verifications may be conducted. This can be accomplished through a variety or combination of methods, including use of GPS and measuring from known reference points. When GPS is used, procedures must be adopted that allow verifiers to be able to accurately find those suspect locations in areas where the signals for GPS are compromised or otherwise rendered unreliable, such as in tunnels, cut sections, or near buildings. When determining the appropriate procedures to follow, track owners should be particularly mindful of scenarios in which GPS is unreliable and few track features exist, such as can result with some rail that is rolled in weld-free segments that exceed one-tenth of a mile in length.

Proposed paragraph (g) would require that track owners utilizing continuous rail testing submit an annual report to the FRA Associate Administrator for Railroad Safety/Chief Safety Officer no later than 45 days following the end of each calendar year. This would apply only to track owners that have conducted continuous rail testing within the previous calendar year. Continuous testing programs have been trialed through temporary waivers granted to several railroads throughout the country; however, it is important to continue monitoring the overall impacts and efficacy of the process. As proposed, only railroads choosing to conduct continuous rail testing would be required to submit an annual report. This proposed reporting requirement is designed to provide sufficient data to enable a comparison of the results and effectiveness of continuous rail testing, as compared to the results and effectiveness of inspections by railroads who do not use continuous rail testing. The annual report will also allow FRA to monitor the effectiveness of individual railroads' specific continuous testing processes and programs, and compare results on a micro level for specific railroads. Furthermore, as innovation and technology evolve, it is critical to the success of the safety improvement process to collect and analyze this data for positive trend exploration.

FRA will utilize the data provided in each railroad's annual report to match service failure rates with testing frequencies to correlate the impact of increased testing frequencies and the run over run comparison data to the accident rate. This will help ensure that the anticipated safety improvements resulting from the proposed modifications are realized. In addition, FRA intends to analyze and share the data with railroads to inform continuous process improvement, as done during the lengthy waiver history for continuous rail testing. Finally, the information should also serve as a valuable input to FRA's ongoing research on potential commonalities in rail geometry and rail defect growth patterns, to aid the industry in its continuous effort to mitigate the risk of track caused derailments.

The annual report must be in a reasonably usable format, or its native electronic format, and contain at least all the information required by proposed paragraphs (g)(1) through (10) for each track segment requiring internal rail inspection under either § 213.237 or § 213.339. Specifically, the submission must include the track owner's name (g)(1); the name of the railroad division and subdivision (g)(2); the segment identifier, milepost limits, and length of each segment (g)(3); the track number (g)(4); the class of track (g)(5); the annual million gross tons over that segment of track (g)(6); the total number of internal rail tests conducted over each track (g)(7); the type of internal rail test conducted on the segment, whether continuous rail test or stop-and-verify (g)(8); and the total number of defects identified over each track segment (g)(9), which would include only the defects that have been field-verified and determined to be actual defects. Proposed paragraph (g)(10) would also require the total number of service failures on each track segment.

This information would be necessary for FRA to ensure safe operations and monitor the effectiveness of continuous rail testing and the requirements of this regulation as proposed. For FRA to fulfill its responsibilities to oversee railroad safety and the implementation of continuous testing, the agency must receive sufficient data to effectively perform its functions, while not placing undue burden on the industry. Accordingly, the proposed annual reporting requirements are intended to provide a high-level review for FRA to ensure that the continuous testing process would be consistently carried out in a proper manner.

Section 213.241 Inspection Records

Section 213.241 provides that track owners keep a record of each inspection required to be performed under part 213, subpart F. Paragraph (b) of this section requires that each record of inspection under certain sections include specific information, be prepared on the day the inspection is made, and be signed by the person making the inspection. FRA proposes revising paragraph (b) by adding § 213.137 to the list of sections that require inspections for which records must comply with the requirements of paragraph (b). This addition is necessitated by the proposed revision to § 213.137, specifically the incorporation of the waiver allowing the use of FBFs. One of the requirements for the use of FBFs under proposed § 213.137(e)(3) is that they must be inspected at specific intervals. Records of those inspections must be kept and comply with § 213.241(b).

FRA proposes adding the phrase ''or otherwise certified'' after ''signed'' in paragraph (b), and thus require that records be ''signed or otherwise certified by the person making the inspection.'' This is meant to clarify that a record does not have to be physically signed by the person making the inspection. The track owner can choose to use other methods to allow an inspector to certify an inspection record, provided that the method accurately and securely identifies the person making the inspection. Third, FRA proposes to add

three elements to the list of information that must be included in an inspection record. Specifically, FRA proposes that the record must include the author of the record, the type of track inspected, and the location of the inspection. FRA believes this information is already included in most, if not all, of the inspection records currently produced by the railroad industry. The proposal is therefore intended to emphasize the importance of this information and should have little, if any, impact on recordkeeping practices. The remaining edits to paragraph (b) are simply technical edits that have no effect on the intent of the paragraph. Specifically, FRA proposes changing ''owner'' to ''track owner'' at the beginning of the last two sentences. FRA also proposes removing ''either'' before the word ''maintained'' in the last sentence and changing ''10 days notice'' to ''10 days' notice.''

FRA proposes redesignating current paragraphs (f) and (g) as paragraphs (i) and (j), respectively, and revising them, and adding new paragraphs (f), (g), and (h). Proposed paragraph (f) would list the recordkeeping requirements for continuous testing performed under proposed § 213.240. These are similar to the current recordkeeping requirements for internal rail inspections conducted under § 213.237. Proposed paragraph (f)(1) would require the track owner's continuous rail testing records include all information required under proposed § 213.240(e). Broadly, this would require the track owner to produce a report containing a systematic listing of all suspected locations, and is explained in greater detail above. Proposed paragraph (f)(2) would require that the records state whether the test is being conducted to satisfy the requirements for an internal rail inspection under § 213.237. As discussed in more detail above, this is necessary information because it is relevant to whether the track owner must comply with the field verification time limits in proposed § 213.240(e). Proposed paragraph (f)(3) would require that the continuous rail testing records include the date and time of the beginning and end of each continuous test run, as well as the date and time each suspect location was identified and field-verified. Proposed paragraph (f)(4) would require that the continuous testing records include the determination made for each suspect location after field verification. This must include, at a minimum, the location and type of defect, the size of the defect, and the initial remedial action taken, if required, and the date thereof. Finally, proposed paragraph (f)(5) would require that these records be kept for two years from the date of the inspection, or one year after initial remedial action, whichever is later.

Proposed paragraph (g) is similar to existing paragraph (e). It would require any track owner that elects to conduct continuous testing under proposed § 213.240 to maintain records sufficient for monitoring and determining compliance with all applicable regulations and make those records available to FRA during regular business hours following reasonable notice. For example, the track owner must keep sufficient records of procedures enacted to comply with proposed § 213.240(b) as well qualification procedures under § 213.238. The meaning of the term ''reasonable notice'' would depend on the specific facts of each situation (*e.g.,* time of day, day of the week, number of records requested, etc.).

Proposed paragraph (h) states that track inspection records, meaning each inspection record created under § 213.241, shall be available to persons who performed the inspections and to persons performing subsequent inspections of the track segment. This is vitally important to ensure the quality and effectiveness of track inspections, and FRA believes that in most cases this is already being done, as it is required, at least for electronic inspection records, under existing § 213.241(g)(7). A person performing a subsequent inspection must have an understanding of the track condition during previous inspections to effectively recognize significant changes in the track condition as well as ensure that previously-noted defects are adequately protected, have been adequately remediated, or have not degraded to a degree that requires further action.

FRA proposes redesignating existing paragraph (f) as paragraph (i) and revising it by adding to the end of the paragraph ''during regular business hours following reasonable notice.'' The meaning of the term ''reasonable notice'' would depend on the specific facts of each situation (*e.g.,* time of day, day of the week, number of records requested, etc.).

FRA proposes redesignating existing paragraph (g) as paragraph (j) and revising it. FRA first proposes to reword the introductory language of the paragraph (g) to make it clearer. The new language allows a track owner to create, retain, transmit, store, and retrieve records by electronic means for purposes of complying with this section. The proposed change to this language is not meant to affect the meaning or intent of this paragraph.

Further, in redesignating paragraph (g) as paragraph (j), FRA would remove existing paragraphs (g)(5) through (7). Existing paragraph (g)(1) would be redesignated as paragraph (j)(3), existing paragraph (g)(2) would be redesignated as paragraph (j)(5), and existing paragraph (g)(3) would be redesignated as paragraph (j)(4). Proposed new paragraphs (j)(1) and (2) would be added. FRA believes the proposal would preserve the intent of existing paragraph (g), ensuring the integrity of electronic records, while increasing clarity and allowing track owners additional flexibility without negatively impacting safety.

Proposed paragraph (j)(1) would require that the system used to generate the electronic records meet all the requirements and include all the information required under subpart F. Proposed paragraph (j)(2) would require that the track owner monitor its electronic records database to ensure record accuracy. FRA would intentionally leave it up to the track owner to determine the best way to effectively monitor, protect, and maintain the integrity and accuracy of its records database. FRA proposes that existing paragraph (g)(1) be redesignated as paragraph (j)(3) and revised to require that the electronic system be designed to uniquely identify the author of each record and prohibit two persons from having the same electronic identity. This is a simplified rephrasing of the requirements of existing paragraph (g)(1).

FRA proposes that existing paragraph (g)(3) be redesignated as paragraph (j)(4) and slightly revised. Proposed paragraph (j)(4) would require that the electronic system ensures each record cannot be modified or replaced in the system once the record is completed. The one meaningful change is that proposed paragraph (j)(4) would prohibit modification once the record is completed while existing paragraph (g)(3) prohibits modification once the record is transmitted and stored. FRA recognizes that there are times when an inspection record may include information that cannot be entered until a later date, such as the date of final repair. Proposed paragraph (j)(4) would therefore allow for modification of a record, provided the modification is made by the original author of the record or the author of the modification is identified in the record, after the record has been transmitted but before the record has been fully completed. This would not permit someone other than the author of the record to modify existing information at a later date, such

as track measurements or listings of reported defects.

FRA proposes that existing paragraph (g)(2) be redesignated as paragraph (j)(5) and revised to require that electronic storage of records be initiated by the person making the inspection within 72 hours following completion of the inspection. Existing paragraph (g)(2) requires that electronic storage be initiated within 24 hours of completion of the inspection. FRA believes that giving track owners an additional 48 hours to upload inspection records would provide needed flexibility without negatively impacting safety. For example, where an inspector does not have internet connection or where their computer fails, it may take more than 24 hours to upload the inspection report. The new 72-hour requirement would also take into account the possibility of technical issues occurring late on a Friday that cannot be remedied until the following Monday, due to limited availability of technical support personnel.

FRA proposes removing existing paragraph (g)(5), which requires that the electronic system provide for maintenance of the inspection records without corruption or loss of data. FRA believes that proposed paragraph (j)(2), which would require that the track owner monitor the database to ensure record accuracy, would make existing paragraph (g)(5) redundant. FRA also proposes removing existing paragraph (g)(6), which generally requires that track owners make paper copies of electronic records available to FRA. FRA believes that this would also be redundant given that existing paragraph (f) already requires this, and would continue to require as redesignated paragraph (i). Finally, FRA proposes removing existing paragraph (g)(7), which requires that electronic track inspection records be kept available to persons who performed the inspections and to persons performing subsequent inspections. FRA believes this would be made redundant with the addition of proposed paragraph (h), which would require the same for all records.

Section 213.305 Designation of Qualified Individuals; General Qualifications

Proposed revisions are intended to mirror the relevant proposed revisions to § 213.7, discussed above. Section 213.305 addresses the qualification of individuals responsible for the maintenance and inspection of Class 6 and above track. Currently, paragraphs (a)(3), (b)(3), and (c)(4) each require that a qualified person ''[b]e authorized in writing'' or possess ''[w]ritten authorization from the track owner.'' Although FRA believes that the term ''written'' and ''in writing'' can be interpreted to encompass both physical hardcopies of an authorization as well as electronic versions, to avoid any possible confusion, FRA proposes to remove the terms ''written'' and ''in writing.'' These changes would make clear that the required authorizations under these paragraphs may be recorded and conveyed either in hardcopy or electronic form.

FRA proposes to revise and reorganize paragraph (e) to clarify the type of information track owners must include in their records of designations made under paragraphs (a) through (d). First, for the reasons stated above, the term ''written'' would be removed. Records of designations made under § 213.305 can be either in physical or electronic form. FRA proposes to add new paragraph (e)(2) to require records of designations include the date each designation was made. The date of an individual's designation is relevant and important information both to the track owner and to FRA, and FRA believes most, if not all, track owners already include this in their designation records. To incorporate this proposed revision, existing paragraph (e)(2) would be redesignated as paragraph (e)(3).

FRA also proposes to remove the first sentence of existing paragraph (e)(3), because it is redundant when considering the requirements of § 213.369. The second sentence of existing paragraph (e)(3) would be redesignated as paragraph (f) and revised. As under the existing regulation, a track owner would be required to make the records kept under paragraph (e) available for inspection and copying by FRA. FRA proposes rephrasing the sentence to require that FRA make its request for records during normal business hours and give the track owner ''reasonable notice'' before requiring production. The meaning of the term ''reasonable notice'' would depend on the specific facts of each situation (*e.g.,* time of day, day of the week, number of records requested, etc.).

Section 213.365 Visual Track Inspections

Proposed revisions are intended to mirror the relevant proposed revisions to § 213.233, discussed above. FRA first proposes to revise the heading for § 213.365 by adding the word ''track'' after ''visual'' so that the heading reads ''Visual track inspections.'' This change is not meant to affect the intent of the section. Because other sections in part 213 cover different types of inspections (*e.g.,* automated inspections, inspections of rail, etc.), the proposed heading change is simply intended to clarify that this section deals specifically with visual track inspections. This proposal is also consistent with the current heading for the corresponding non-high-speed track section, § 213.233, ''Track inspections.'' As discussed above, FRA proposes to revise the heading for § 213.233 so that the headings are the same for both §§ 213.233 and 213.365.

FRA also proposes revising paragraph (b) to change the terms ''riding over'' and ''passing over'' to ''traversing,'' and ''is riding'' and ''are riding'' to ''traverses'' and ''traverse.'' Additionally, FRA proposes changing ''is actually'' to ''must be'' in paragraph (b)(3). These changes are not meant to affect the meaning of § 213.365, but instead are made for grammatical consistency.

FRA proposes removing the last sentence of paragraph (b)(3), also known as the high-density commuter line exception. It is FRA's understanding that no railroads currently utilize this exception. Paragraph (b)(3) requires, among other things, that each main track be traversed by a vehicle or inspector on foot at least once every two weeks, and every siding at least every month. The high-density commuter line exception applies where track time does not permit on-track vehicle inspection and where track centers are 15 feet or less apart and exempts those operations from the inspection method requirements of paragraph (b)(3). FRA's proposal to remove this exception is consistent with NTSB recommendation R–14–11, section 11409 of the FAST Act, and the proposal to remove the counterpart to this section in § 213.233(b)(3), as discussed above in the section-by-section analysis for § 213.233(b)(3) and in section IV.B.i of this NPRM.

FRA proposes two revisions to paragraph (c). First, FRA proposes to add the word ''visual'' before ''track inspection'' in the introductory text. This would simply be to make paragraph (c) consistent with the heading for § 213.365 and would have no effect on the meaning of paragraph (c). Second, FRA proposes adding footnote 1 after the word ''weekly'' in the table in paragraph (c). The footnote defines the term ''weekly'' to be any seven-day period beginning on Sunday and ending on Saturday. This definition is consistent with FRA's past interpretation and enforcement practice, as well as FRA's public guidance included in Volume II, Chapter 1, of the Track and Rail and Infrastructure Integrity Compliance Manual, March 1,

2018, available on FRA's public eLibrary (*https://www.fra.dot.gov/eLib/Find*).

FRA also proposes to revise paragraph (d). Specifically, FRA would add the phrase ''the § 213.305 qualified'' at the beginning of the paragraph to clarify that ''the person'' making the inspection that the existing rule text refers to is the qualified track inspector designated under § 213.305. Additionally, FRA proposes adding a sentence at the end of paragraph (d) stating that any subsequent movements to facilitate repairs on track that is out of service must be authorized by a § 213.305 qualified person. This section is silent as to whether or when movement over track that is out of service is permissible. FRA recognizes that certain movements are necessary to facilitate repairs and does not interpret or enforce the current regulatory language to bar track owners from moving equipment and materials to do so on track that is out of service. The proposed revision is meant to embody that practice and interpretation into the regulation and prevent possible confusion.

Section 213.369 Inspection Records

Proposed revisions are intended to mirror the relevant proposed revisions to § 213.241, discussed above. FRA proposes adding the phrase ''or otherwise certified'' after ''signed'' in paragraph (b), and thus require that records be ''signed or otherwise certified by the person making the inspection.'' This is meant to clarify that a record does not have to be physically signed by the person making the inspection. The track owner can choose to use other methods to allow an inspector to certify an inspection record, provided that the method accurately and securely signifies the identity of the person making the inspection. Next, FRA proposes to add three elements to the list of information that must be included in an inspection record. Specifically, FRA proposes that the record must include the author of the record, the type of track inspected, and the location of the inspection. FRA believe this information is already included in most, if not all, of the inspection records currently produced by the railroad industry. The proposal is therefore intended to emphasize the importance of this information and should have little, if any, impact on recordkeeping practice. The remaining edits to paragraph (b) are simply technical edits that have no effect on the intent or effect of the paragraph. Specifically, FRA proposes changing ''owner'' to ''track owner'' at the beginning of the last two sentences. FRA also proposes removing ''either'' before the word ''maintained'' in the last sentence and changing ''10 days notice'' to ''10 days' notice.''

FRA proposes redesignating paragraphs (d), (e), and (f) as paragraphs (g), (h), and (i), respectively, and revising them, and adding new paragraphs (d), (e), and (f). Proposed paragraph (d) would list the recordkeeping requirements for continuous testing performed under proposed § 213.240. These are similar to the current recordkeeping requirements for internal rail inspections conducted under § 213.339. Proposed paragraph (d)(1) would require the track owner's continuous rail testing records include all information required under proposed § 213.240(e). Broadly, this would require the track owner to produce a report containing a systematic listing of all suspected locations, and is explained in greater detail above. Proposed paragraph (d)(2) would require that the records state whether the test is being conducted to satisfy the requirements for an internal rail inspection under § 213.339. As discussed in more detail above, this is necessary information because it is relevant to whether the track owner must comply with the field verification time limits in proposed § 213.240(e). Proposed paragraph (d)(3) would require that the continuous rail testing records include the date and time for the beginning and end of each continuous test run, as well as the date and time each suspect location was identified and field-verified. Proposed paragraph (d)(4) would require that the continuous testing records include the determination made for each suspect location after field verification. This must include, at a minimum, the location and type of defect, the size of the defect, and the initial remedial action taken, if required, and the date thereof. Finally, proposed paragraph (d)(5) would require that these records be kept for two years from the date of the inspection, or one year after initial remedial action, whichever is later.

Proposed paragraph (e) would require any track owner that elects to conduct continuous testing under proposed § 213.240 to maintain records sufficient for monitoring and determining compliance with all applicable regulations and make those records available to FRA during regular business hours following reasonable notice. For example, the track owner must keep sufficient records of procedures developed to comply with proposed § 213.240(b) as well qualification procedures under § 213.238. The meaning of the term ''reasonable notice'' would depend on the specific facts of each situation (*e.g.,* time of day, day of the week, number of records requested, etc.).

Proposed paragraph (f) states that track inspection records, meaning each inspection record created under § 213.369, shall be available to persons who performed the inspections and to persons performing subsequent inspections of the track segment. This is vitally important to ensure the quality and effectiveness of track inspections, and FRA believes that in most cases this is already being done, as it is required, at least for electronic inspection records, under existing § 213.369(e)(7). A person performing a subsequent inspection must have an understanding of the track condition during previous inspections to effectively recognize significant changes in the track condition as well as ensure that previously noted defects are adequately protected, have been adequately remediated, or have not degraded to a degree that requires further action.

As noted above, FRA proposes redesignating existing paragraph (d) as paragraph (g), and revising it, principally by adding to the end of the paragraph ''upon request during regular business hours following reasonable notice.'' The meaning of the term ''reasonable notice'' would depend on the specific facts of each situation (*e.g.,* time of day, day of the week, number of records requested, etc.).

FRA also proposes redesignating existing paragraph (e) as paragraph (h), and revising it. FRA first proposes to reword the introductory language of existing paragraph (e) to make it clearer. The new language would allow a track owner to create, retain, transmit, store, and retrieve records by electronic means for purposes of complying with this section. The proposed change to this language is not meant to affect the meaning or intent of this paragraph.

Further, in redesignating paragraph (e) as paragraph (h), FRA would remove existing paragraphs (e)(5) through (7). Existing paragraph (e)(1) would be redesignated as paragraph (h)(3), existing paragraph (e)(2) would be redesignated as paragraph (h)(5), and existing paragraph (e)(3) would be redesignated as paragraph (h)(4). Proposed new paragraphs (e)(1) and (2) would be added. FRA believes the proposal would preserve the intent of existing paragraph (e), ensuring the integrity of electronic records, while increasing clarity and allowing track owners additional flexibility without negatively impact safety.

Proposed paragraph (h)(1) would require that the system used to generate the electronic records meet all the requirements and include all the

information required under subpart G. Proposed paragraph (h)(2) would require that the track owner monitor its electronic records database to ensure record accuracy. FRA would intentionally leave it up to the track owner to determine the best way to effectively monitor, protect, and maintain the integrity and accuracy of its records database. FRA proposes that existing paragraph (e)(1) be redesignated as paragraph (h)(3) and revised to require that the electronic system be designed to uniquely identify the author of each record and prohibit two persons from having the same electronic identity. This is a simplified rephrasing of the requirements of existing paragraph (e)(1).

FRA proposes that existing paragraph (e)(3) be redesignated as paragraph (h)(4) and slightly revised. Proposed paragraph (h)(4) would require that the electronic system ensures each record cannot be modified or replaced in the system once the record is completed. The one meaningful change is that proposed paragraph (h)(4) would prohibit modification once the record is completed; instead, existing paragraph (e)(3) prohibits modification once the record is transmitted and stored. FRA recognizes that there are times when an inspection record may include information that cannot be entered until a later date, such as the date of final repair. Proposed paragraph (h)(4) would therefore allow for modification of a record, provided the modification is made by the original author of the record or the author of the modification is identified in the record, after the record has been transmitted but before the record has been fully completed. This would not permit someone other than the author of the record to modify existing information at a later date, such as track measurements or listings of reported defects.

FRA proposes that existing paragraph (e)(2) be redesignated as paragraph (h)(5) and revised to require that electronic storage of records be initiated by the person making the inspection within 72 hours following completion of the inspection. Existing paragraph (e)(2) requires that electronic storage be initiated within 24 hours of completion of the inspection. FRA believes that giving track owners an additional 48 hours to upload inspection records would provide needed flexibility without negatively impacting safety. For example, where an inspector does not have internet connection or experiences computer failure, it may take more than 24 hours to upload the inspection report. The new 72-hour requirement would also take into account the possibility of technical issues occurring late on a Friday that cannot be remedied until the following Monday, due to limited availability of technical support personnel.

FRA proposes removing existing paragraph (e)(5), which requires that the electronic system provide for maintenance of the inspection records without corruption or loss of data. FRA believes that proposed paragraph (h)(2), which would require that the track owner monitor the database to ensure record accuracy, would make existing paragraph (e)(5) redundant. FRA also proposes removing existing paragraph (e)(6), which generally requires that track owners make paper copies of electronic records available to FRA. FRA believes that this would also be redundant given that existing paragraph (d) already requires this, and would continue to require as redesignated paragraph (g). Finally, FRA proposes removing existing paragraph (e)(7), which requires that electronic track inspection records be kept available to persons who performed the inspections and to persons performing subsequent inspections. FRA believes this would be made redundant with the addition of proposed paragraph (f), which would require the same for all records.

FRA is redesignating paragraph (f) as paragraph (i) and slightly revising it for punctuation; no substantive change is intended.

VI. Regulatory Impact and Notices

A. Executive Order 12866, and DOT Regulatory Policies and Procedures

This proposed rule is a significant regulatory action within the meaning of Executive Order 12866 (E.O. 12866) and DOT policies and procedures. *See* DOT Order 2100.6, Policies and Procedures for Rulemaking (Dec. 20, 2018), *available at https://cms.dot.gov/sites/dot.gov/files/docs/regulations/328561/dot-order-21006-rulemaking-process-signed-122018.pdf.* Additionally, this proposed rule is considered an E.O. 13771 deregulatory action. Details on the estimated cost savings of this proposed rule can be found in the proposed rule's Regulatory Impact Analysis, which FRA has prepared and placed in the docket (docket number FRA–2018–0104). The analysis details estimated costs and cost savings the railroad track owners regulated by the rule are likely to see over a 10-year period.

FRA proposes to revise its regulations governing the minimum safety requirements for railroad track. The proposed changes include: Permitting the inspection of rail using continuous rail testing; allowing the use of flange-bearing frogs in crossing diamonds; relaxing the guard check gage limits on heavy-point frogs used in Class 5 track; removing the high-density commuter line exception; and other miscellaneous revisions.

The proposed revisions would benefit railroad track owners and the public by reducing unnecessary costs and incentivizing innovation, while not negatively affecting safety.

The following table shows the net cost savings of this proposed rule, over the 10-year analysis.

NET COST SAVINGS, IN MILLIONS

[2018 dollars]

	Present value 7%	Present value 3%	Annualized 7%	Annualized 3%
Costs	$25.9	$31.4	$3.7	$3.7
Cost Savings	148.7	180.3	21.2	21.1
Net Cost Savings	122.8	148.9	17.5	17.4

The estimated 10-year net cost savings of the proposed rule would be $122.8 million (7%) and $148.9 million (3%). The annualized net cost savings would be $17.5 million (7%) and $17.4 million (3%).

The additional flexibility of this proposed rule would result in cost savings for railroad track owners. Continuous rail testing would reduce overtime hours for maintenance-of-way employees. The flange-bearing frog

changes would eliminate the required inspection time during the first week when compared to current conditions under the FRA waiver. The continuous testing, flange-bearing frog, and heavy-point frog changes would eliminate the need for and costs of applying for waivers to implement such a testing practice and track components. In fact, fewer slow orders would be needed with continuous testing, which would result in a significant cost savings.

The table below presents the estimated cost savings associated with the proposed rule, over the 10-year analysis.

SUMMARY OF TOTAL COST SAVINGS, IN MILLIONS

Section	Present value 7%	Present value 3%	Annualized 7%	Annualized 3%
Flange Bearing Frog Inspections	$0.191	$0.223	$0.027	$0.026
Frog Waiver Savings	0.013	0.016	0.002	0.002
Continuous Testing Labor Cost Savings	7.086	8.590	1.009	1.007
Slow Orders	141.329	171.340	20.122	20.086
Continuous Testing Waiver Savings	0.130	0.154	0.012	0.010
Total	148.749	180.324	21.172	21.132

The estimated 10-year total cost savings of the proposed rule would be $148.7 million (discounted at 7%) and $180.3 million (discounted at 3%). The annualized cost savings would be $21.2 million (7%) and $21.1 million (3%).

If railroad track owners choose to take advantage of the cost savings from this proposed rule, they would incur additional labor costs associated with continuous rail testing. These costs are voluntary because track owners would only incur them if they choose to operate continuous rail testing vehicles. The table below presents the estimated costs, over the 10-year analysis.

SUMMARY OF TOTAL COSTS, IN MILLIONS

	Present value 7%	Present value 3%	Annualized 7%	Annualized 3%
Continuous Testing	$25.9	$31.4	$3.7	$3.7

The estimated 10-year costs of the proposed rule would be $25.9 million (discounted at 7%) and $31.4 million (discounted at 3%). The annualized costs would be $3.7 million (at both 7% and 3%).

The proposed rule would also encourage the use of continuous rail testing, which may reduce certain types of derailments. FRA does not have sufficient data to estimate the reduction in derailments. However, FRA expects the proposed rule to result in safety benefits from fewer injuries, fatalities, and property and track damage.

B. Regulatory Flexibility Act

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

Therefore, FRA prepared an IRFA which is included as an appendix to the accompanying Regulatory Impact Analysis and available in the docket for this rulemaking (FRA 2018–0104) to aid the public in commenting on the potential small business impacts of the requirements in this NPRM.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule are being submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the current and new information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual dollar cost equivalent [3]
213.4—Excepted track—Notification to FRA about removal of excepted track.	236 railroads	15 notices	10 minutes	3	$219
213.5—Responsibility of track owners	744 railroads	10 written notices	1 hour	10	730
213.7—Designation of qualified persons to supervise certain renewals and inspect track—Designations: Names on list with written authorization.	728 railroads	1,500 names	10 minutes	250	18,250
213.17—Waivers	744 railroads	6 petitions	2 hours	12	876
213.57—Curves, elevation and speed limitations:					

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual dollar cost equivalent [3]
—Request to FRA for vehicle type approval.	744 railroads	2 requests	8 hours	16	1,168
—Written Notification to FRA prior to implementation of higher curving speeds.	744 railroads	2 notifications	2 hours	4	292
—Written consent of track owners obtained by railroad providing service over that track.	744 railroads	2 written consents	45 minutes	2	146
213.110—Gage restraint measurement systems (GRMS):					
—Implementing GRMS—notices & reports.	744 railroads	5 notifications + 1 tech. rpt.	45 minutes/4 hours	8	365
—GRMS vehicle output reports	744 railroads	50 reports	5 minutes	4	288
—GRMS vehicle exception reports	744 railroads	50 reports	5 minutes	4	288
—GRMS/PTLF—procedures for data integrity.	744 railroads	1 proc. doc	2 hours	2	146
—GRMS inspection records	744 railroads	50 records	1 hour	50	3,650
213.118—Continuous welded rail (CWR); plan review and approval:					
—Revised plans w/ procedures for CWR.	436 railroads	8 plans	4 hours	32	2,336
—Notification to FRA and RR employees of CWR plan effective date.	436 RRs/80,000 employees.	800 notifications	15 seconds	3	219
—Written submissions after plan disapproval.	744 railroads	7 written submissions.	2 hours	14	1,022
—Final FRA disapproval and plan amendment.	744 railroads	7 amended plans	1 hour	7	511
213.119—Continuous welded rail (CWR); plan contents:					
—Record keeping for special inspections.	436 railroads	60,000 records	15 seconds	250	18,250
—Record keeping for CWR rail joints	436 railroads	180,000 rcds	2 minutes	6,000	438,000
—Periodic records for CWR rail adjustments.	436 railroads	480,000 rcds	2 minutes	16,000	1,168,000
213.137—New Requirements—Frogs:					
—Railroad documentation of flange-bearing frogs (FBFs) location, crossing angle, tonnage, speed, directions, and type of traffic.	744 railroads	5 railroad documents.	30 minutes	3	219
—Inspection of FBF crossing diamond installations and records.	744 railroads	240 inspection/records.	15 minutes	60	4,380
—RR preparation and distribution of insert to maintenance manuals for responsible personnel for the inspection and repair of FBF crossing diamonds.	744 railroads	7 manuals	30 minutes	4	292
213.143—New Requirements—Frog guard rails and guard faces; gage (FRA request from RR/track owner of record of the location and description of each turnout containing a heavy-point frog (HPF)).	744 railroads	10 HPF turnout records.	30 minutes	5	365
213.237—Inspection of Rail:					
—Detailed request to FRA to change designation of a rail inspection segment or establish a new segment.	10 railroads	10 requests	15 minutes	3	219
—Notification to FRA and all affected employees of designation's effective date after FRA's approval/conditional approval.	10 railroads	50 notices + 120 notices/bulletins.	15 minutes	43	3,139
—Notice to FRA that service failure rate target in paragraph (a) of this section is not achieved.	10 railroads	12 notices	15 minutes	3	219
—Explanation to FRA as to why performance target was not achieved and provision to FRA of remedial action plan.	10 railroads	12 letters of explanation + 12 plans.	15 minutes	6	438
213.240—New Requirements—Continuous rail testing.	12 railroads	12 reports	4 hours	48	3,504
213.241—Inspection records	744 railroads	1,375,000 records	10 minutes	229,167	16,729,191

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual dollar cost equivalent [3]
213.303—Responsibility for compliance	2 railroads	1 notification	1 hour	1	73
213.305—Designation of qualified individuals; general qualifications:					
—Designations (partially qualified)	2 railroads	200 railroad designations.	10 minutes	33	2,409
—RR produced designation record upon FRA request.	2 railroads	20 records	30 minutes	10	730
213.317—Waivers	2 railroads	1 petition	2 hours	2	146
213.329—Curves, elevation and speed limitations:					
—FRA approval of qualified vehicle types based on results of testing.	2 railroads	2 docs	8 hours	16	1,168
—Written notification to FRA 30 days prior to implementation of higher curving speeds.	2 railroads	2 notices	2 hours	4	292
—Written Consent of Other Affected Track Owners by Railroad.	2 railroads	2 written consents	45 minutes	2	146
213.333—Automated Vehicle Insp. System—Measurements:					
—TGMS Output/Exception Reports	7 railroads	7 reports	1 hour	7	504
213.341—Initial inspection of new rail & welds:					
—Inspection of field welds	2 railroads	800 records	2 minutes	27	1,971
213.343—Continuous welded rail (CWR):					
—Revised plans w/ procedures for CWR.	2 railroads	1 plan	4 hours	4	292
—Notification to FRA and RR employees of CWR plan effective date.	2 RRs/80,000 employees.	100 notifications	15 seconds	0.4	30
—Written submissions after plan disapproval.	2 railroads	1 written submission	2 hours	2	146
—Final FRA disapproval and plan amendment.	2 railroads	1 amended plan	1 hour	1	73
213.345—Vehicle qualification testing:					
—Vehicle qualification program for all vehicle types operating at track Class 6 speeds or above.	2 railroads	2 programs	120 hours	240	17,520
—Previously qualified vehicle types qualification programs.	2 railroads	2 programs	40 hours	80	5,840
—Written consent of other affected track owners by railroad.	2 railroads	2 written consents	8 hours	16	1,760
213.369—Inspection Records:					
—Record of inspection of track	2 railroads	15,000 records	1 minute	250	18,250
—Internal defect inspections and remedial action taken.	2 railroads	50 records	5 minutes	4	292
Total	744 railroads	2,114,200	N/A	252,712	18,448,364

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: Whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Ms. Hodan Wells, Information Clearance Officer, Federal Railroad Administration, at 202–493–0440, or Ms. Kimberly Toone, Records Management Officer, Federal Railroad Administration, at 202–493–6139.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Ms. Hodan Wells or Ms. Kimberly Toone, Federal Railroad Administration, 1200 New Jersey Avenue SE, 3rd Floor, Washington, DC 20590. Comments may also be submitted via email to Ms. Wells at *Hodan.Wells@dot.gov,* or to Ms. Toone at *Kim.Toone@dot.gov.*

OMB is required to make a decision concerning the collection of information requirements 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. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

[3] The dollar equivalent cost is derived from the 2018 Association of American Railroads publication titled Railroad Facts (Employment and Annual Wages by Class) using the appropriate employee group to calculate the average hourly wage rate that includes 75 percent overhead charges.

FRA is not authorized to impose a penalty on persons for violating information collection requirements that do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

D. Environmental Impact

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

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

E. Federalism Implications

Executive Order 13132, ''Federalism'' (64 FR 43255 (Aug. 10, 1999)), requires FRA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

FRA has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 13132. FRA has determined that this final rule has no federalism implications, other than the possible preemption of state laws under 49 U.S.C. 20106. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply, and preparation of a federalism summary impact statement for the proposed rule is not required.

F. Unfunded Mandates Reform Act of 1995

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

G. Energy Impact

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

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

H. Privacy Act Statement

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

List of Subjects in 49 CFR Part 213

Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Proposed Rule

For the reasons discussed in the preamble, FRA proposes to amend part 213 of chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

PART 213—[AMENDED]

■ 1. The authority citation for 49 CFR part 213 continues to read as follows:

Authority: 49 U.S.C. 20102–20114 and 20142; Sec. 403, Div. A, Pub. L. 110–432, 122 Stat. 4885; 28 U.S.C. 2461, note; and 49 CFR 1.89.

Subpart A—General

■ 2. Amend § 213.1 by revising paragraph (b) to read as follows:

§ 213.1 Scope of part.

* * * * *

(b) Subparts A through F apply to track Classes 1 through 5. Subpart G and 213.2, 213.3, 213.15, and 213.240 apply to track over which trains are operated at speeds in excess of those permitted over Class 5 track.

■ 3. Amend § 213.5 by revising paragraph (a)(3) to read as follows:

§ 213.5 Responsibility for compliance.

(a) * * *

(3) Operate under authority of a person designated under § 213.7(a), subject to conditions set forth in this part. If the operation is on continuous welded rail (CWR) track, the person under whose authority operations are conducted must also be designated under § 213.7(c).

* * * * *

■ 4. Amend § 213.7 by revising paragraphs (a)(1)(i) and (ii), (a)(3), (b)(3), (c)(4), and (e) and adding paragraph (f) to read as follows:

§ 213.7 Designation of qualified persons to supervise certain renewals and inspect track.

(a) * * *

(1) * * *

(i) 1 year of experience in railroad track maintenance under traffic conditions; or

(ii) A combination of experience in track maintenance and training from a course in track maintenance or from a college level educational program related to track maintenance.

* * * * *

(3) Authorization from the track owner to prescribe remedial actions to correct or safely compensate for deviations from the requirements of this part.

(b) * * *

(3) Authorization from the track owner to prescribe remedial actions to correct or safely compensate for deviations from the requirements of this part, pending review by a qualified person designated under paragraph (a) of this section.

(c) * * *

(4) Authorization from the track owner to prescribe remedial actions to correct or safely compensate from deviation from the requirements in these procedures and successfully completed a recorded examination on those procedures as part of the qualification process.

* * * * *

(e) With respect to designations under paragraph (a) through (d) of this section, each track owner shall maintain records of—

(1) Each designation in effect;

(2) The date each designation was made; and

(3) The basis for each designation, including the method used to determine that the designated person is qualified.

(f) Each track owner shall keep designation records required under paragraph (e) of this section readily available for inspection or copying by the Federal Railroad Administration during regular business hours, following reasonable notice.

■ 5. Amend § 213.9 by revising paragraph (b) to read as follows:

§ 213.9 Classes of track: operating speed limits.

* * * * *

(b) If a segment of track does not meet all of the requirements of its intended class, it is reclassified to the next lowest class of track for which it does meet all of the requirements of this part. However, if the segment of track does not at least meet the requirements of Class 1 track, operations may continue at Class 1 speeds for a period of not more than 30 days without bringing the track into compliance, under the authority of a person designated under § 213.7(a), after that person determines that operations may safely continue and subject to any limiting conditions specified by such person.

■ 6. Revise § 213.11 to read as follows:

§ 213.11 Restoration or renewal of track under traffic conditions.

If during a period of restoration or renewal, track is under traffic conditions and does not meet all of the requirements prescribed in this part, the work on the track shall be under the continuous supervision of a person designated under § 213.7(a), and (c) as applicable, and subject to any limiting conditions specified by such person. The operating speed cannot be more than the maximum allowable speed under § 213.9 for the class of track concerned. The term ''continuous supervision'' as used in this section means the physical presence of that person at the job site. However, since the work may be performed over a large area, it is not necessary that each phase of the work be done under the visual supervision of that person.

Subpart D—Track Structure

■ 7. Amend § 213.113 by revising the second sentence of paragraph (b) introductory text to read as follows:

§ 213.113 Defective rails.

* * * * *

(b) * * * Except as provided in § 213.240, the track owner must verify the indication within four hours, unless the track owner has an indication of the existence of a defect that requires remedial action A, A2, or B identified in the table contained in paragraph (c) of this section, in which case the track owner must immediately verify the indication. If the indication is verified, the track owner must—

* * * * *

■ 8. Amend § 213.137 by revising paragraph (a) and adding paragraph (e), to read as follows:

§ 213.137 Frogs.

(a) Except as provided in paragraph (e) of this section, the flangeway depth measured from a plane across the wheel-bearing area of a frog on Class 1 track shall not be less than 1⅜ inches, or less than 1½ inches on Classes 2 through 5 track.

* * * * *

(e) The flange depth requirements in paragraph (a) do not apply to a frog designed as a flange-bearing frog (FBF) used in a crossing diamond in Classes 2 through 5 track, provided that:

(1) The crossing angle is greater than 20 degrees unless movable guard rails are used;

(2) The track owner documents the location, crossing angle, tonnage, speed, direction, and type of traffic for each FBF used under this paragraph (e), and makes this information available to FRA upon request during regular business hours following reasonable notice; and

(3) Maintenance manuals are prepared and made available to all personnel who are responsible for inspecting and repairing each FBF used under this paragraph (e). Each person conducting inspections of or repairing such an FBF must be properly trained.

■ 9. Revise § 213.143 to read as follows:

§ 213.143 Frog guard rails and guard faces; gage.

The guard check and guard face gages in frogs shall be within the limits prescribed in the following table—

Class of track	Guard check gage	Guard face gage
	The distance between the gage line of a frog to the guard line [1] of its guard rail or guarding face, measured across the track at right angles to the gage line,[2] may not be less than—	The distance between guard lines,[1] measured across the track at right angles to the gage line,[2] may not be more than—
Class 1 track	4′6⅛″	4′5¼″
Class 2 track	4′6¼″	4′5⅛″
Class 3 and 4 track	4′6⅜″	4′5⅛″
Class 5 track	[3] 4′6½″	4′5″

[1] A line along that side of the flangeway which is nearer to the center of the track and at the same elevation as the gage line.
[2] A line five-eighths of an inch below the top of the center line of the head of the running rail, or corresponding location of the tread portion of the track structure.
[3] For any heavy-point frog (HPF) on class 5 track, the guard check gage may be less than 4′6½″ but not be less than 4′6⅜″, provided that:
(a) Each track owner maintains a record of the location and description of each turnout containing an HPF, and makes this information available to FRA upon request during regular business hours following reasonable notice;
(b) Each HPF and guard rails on both rails through the turnout are equipped with at least three serviceable through-gage plates with elastic rail fasteners and guard rail braces that permit adjustment of the guard check gage without removing spikes or other fasteners from the crossties;
(c) Each track owner provides all of its employees who are designated under § 213.7 to inspect track or supervise restoration and renewal of track, or both, in areas that include turnouts with HPFs, with the proper maintenance manuals, instructions, and training; and
(d) Each HPF bears an identifying mark applied by either the track owner, railroad, or the frog manufacturer that identifies the frog as an HPF. The identifying mark to be applied or used shall be specified in the instructions to employees described in paragraph (d)(3) of this footnote.

Subpart F—Inspection

■ 10. Amend § 213.233 by
■ a. Revising the section heading and paragraph (b);
■ b. Revising the first row of the table in paragraph (c) and adding footnotes 1 and 2 to the table;
■ c. Revising paragraph (d).

The revisions and addition to read as follows.

§ 213.233 Visual track inspections.

* * * * *

(b) Each inspection shall be made on foot or by traversing the track in a vehicle at a speed that allows the person making the inspection to visually inspect the track structure for compliance with this part. However, mechanical, electrical, and other track inspection devices may be used to supplement visual inspection. If a vehicle is used for visual inspection, the speed of the vehicle may not be more than 5 m.p.h. when traversing track crossings and turnouts; otherwise, the inspection vehicle speed shall be at the sole discretion of the inspector, based on track conditions and inspection requirements. When traversing the track in a vehicle, the inspection will be subject to the following conditions—

(1) One inspector in a vehicle may inspect up to two tracks at one time provided that the inspector's visibility remains unobstructed by any cause and that the second track is not centered more than 30 feet from the track the inspector traverses;

(2) Two inspectors in one vehicle may inspect up to four tracks at a time provided that the inspectors' visibility remains unobstructed by any cause and that each track being inspected is centered within 39 feet from the track the inspectors traverse;

(3) Each main track must be traversed by the vehicle or inspected on foot at least once every two weeks, and each siding must be traversed by the vehicle or inspected on foot at least once every month; and

(4) Track inspection records shall indicate which track(s) are traversed by the vehicle or inspected on foot as outlined in paragraph (b)(3) of this section.

(c) * * *

Class of track	Type of track	Required frequency
Excepted track, and Class 1, 2, and 3 track.	Main track and sidings	Weekly [1] with at least 3 calendar days' interval between inspections, or before use, if the track is used less than once a week, or twice weekly with at least 1 calendar day interval between inspections, if the track carries passenger trains [2] or more than 10 million gross tons of traffic during the preceding calendar year.
*	*	* * * * *

[1] An inspection week is defined as a seven (7) day period beginning on Sunday and ending on Saturday.
[2] "Twice weekly" inspection requirement for track carrying regularly scheduled passenger trains does not apply where passengers train service consists solely of tourist, scenic, historic, or excursion operations as defined in 49 CFR 238.5 and the following conditions are met for an inspection week: (1) No passenger service is operated during the inspection week, or (2) if passenger service is operated during the inspection week: (i) The passenger service is operated only on a weekend or a 3-day extended weekend (weekend plus a contiguous Monday or Friday), and (ii) an inspection is conducted no more than 1 calendar day before a weekend or 3-day extended weekend on which passenger service is to be operated.

(d) If the § 213.7 qualified person making the inspection finds a deviation from the requirements of this part, the inspector shall immediately initiate remedial action. Any subsequent movements to facilitate repairs on track that is out of service must be authorized by a § 213.7 qualified person.

* * * * *

■ 11. Add § 213.240 to read as follows:

§ 213.240 Continuous Rail Testing

(a) Track owners may elect to use continuous rail testing to satisfy the requirements for conducting internal rail inspections under § 213.237, or § 213.339 where applicable. When a track owner utilizes the continuous rail test inspection process under the requirements of this section, the track owner is exempt from the requirements of § 213.113(b); all other requirements of § 213.113 apply.

(b) Track owners shall adopt the necessary procedures for conducting continuous testing. At a minimum, the procedures must conform to the requirements of this section and address:

(1) How test data will be transmitted and analyzed;

(2) How suspect locations will be identified for field verification;

(3) How suspect locations will be categorized and prioritized according to their potential severity;

(4) How suspect locations will be field-verified; and

(5) How suspect locations will be designated following field verification.

(c) The track owner must designate and record the type of rail test (continuous or stop-and-verify) to be conducted prior to commencing the test over a track segment and make those records available to FRA upon request during regular business hours following reasonable notice. If the type of rail test changes following commencement of the test, the change must be documented and include the time the test was started and when it was changed, the milepost where the test started and where it was changed, and the reason for the change. If the track owner intends to conduct a continuous test, at least 10 days prior to commencement of the test the track owner must designate and record whether the test is being conducted to satisfy the requirements for an internal rail inspection under § 213.237, or § 213.339 if applicable. This documentation must be provided to FRA upon request during regular business hours follow reasonable notice.

(d)(1) Continuous rail test inspection vehicle operators must be qualified under § 213.238;

(2) Internal rail inspection data collected during continuous rail tests must be reviewed and interpreted by a person qualified to interpret the equipment responses; and

(3) All suspect locations must be field-verified by a person qualified under § 213.238.

(e) At a minimum, the continuous rail test process must produce a report containing a systematic listing of all suspected locations that may contain any of the defects listed in the table in § 213.113(c), identified so that a person qualified under § 213.238 can accurately locate and field-verify each suspected defect.

(1) Subject to the requirements of paragraphs (c)(2) and (3) of this section, if the continuous rail test inspection vehicle indicates a suspect location, field verification must be conducted within 72 hours of the completion of the test run, or within 84 hours of the detection of the suspect location, whichever is earlier.

(2) If the continuous rail test inspection vehicle indicates a suspect location containing a suspected defect that, if verified, requires remedial action A, A2, or B identified in the table contained in § 213.113(c), the track owner must field-verify the suspect location no more than 24 hours after the completion of the test run, or 36 hours from detection of the suspect location, whichever is earlier.

(3) If the continuous rail test inspection vehicle indicates a broken rail with rail separation, the track owner must have procedures to ensure that adequate protection is immediately implemented.

(4) A suspect location is not considered a defect under § 213.113(c) until it has been field-verified by a person qualified under § 213.238. After the suspect location is field-verified and determined to be a defect, the track owner must immediately perform all required remedial actions prescribed in § 213.113(a).

(5) Any suspected location not field-verified within the time required under paragraphs (e)(1) and (2) of this section must be protected by applying the most restrictive remedial action under § 213.113(c) for the suspected type and size of the suspected defect. The remedial action must be applied over a sufficient segment of track to assure coverage of the suspected defect location until field-verified.

(f) Each suspect location must be recorded with repeatable accuracy that allows for the location to be accurately located for subsequent verification and, as necessary, remedial action.

(g) Within 45 days following the end of each calendar year, each track owner utilizing continuous rail testing must provide the FRA Associate Administrator for Railroad Safety/Chief Safety Officer with an annual report, in a reasonably usable format, or its native electronic format, containing at least the following information for each track segment requiring internal rail inspection under § 213.237, or § 213.339 if applicable:

(1) The track owner's name;

(2) The railroad division and subdivision;

(3) The segment identifier, milepost limits, and length of each segment;

(4) The track number;

(5) The class of track;

(6) The annual million gross tons over the track;

(7) The total number of internal rail tests conducted over each track;

(8) The type of internal rail test conducted over each segment, either continuous rail test or stop-and-verify;

(9) The total number of defects identified over each track segment; and

(10) The total number of service failures on each track segment.

■ 12. Amend § 213.241 by revising paragraphs (b), (f), and (g), and adding paragraphs (h) through (j) to read as follows:

§ 213.241 Inspection records.

* * * * *

(b) Each record of an inspection under §§ 213.4, 213.119, 213.137, 213.233, and 213.235 shall be prepared on the day the inspection is made and signed or otherwise certified by the person making the inspection. Records shall specify the author of record, the type of track inspected, date and location of inspection, location and nature of any deviation from the requirements of this part, and the remedial action taken by the person making the inspection. The track owner shall designate the location(s) where each original record shall be maintained for at least one year after the inspection covered by the record. The track owner shall also designate one location, within 100 miles of each state in which it conducts operations, where copies of records that apply to those operations are maintained or can be viewed following 10 days' notice by the Federal Railroad Administration.

* * * * *

(f) Records of continuous rail testing under § 213.240 shall—

(1) Include all information required under § 213.240(e);

(2) State whether the test is being conducted to satisfy the requirements for an internal rail inspection under § 213.237;

(3) List the date(s) and time(s) of the continuous rail test data collection, including the date and time of the start and end of the test run, and the date and time each suspect location was identified and field-verified;

(4) Include the determination made after field verification of each suspect location, including the:

(i) Location and type of defect found;

(ii) Size of defect; and

(iii) Initial remedial action taken, if required, and the date thereof; and

(5) Be retained for at least two years after the inspection and for at least one year after initial remedial action is taken, whichever is later.

(g) Track owners that elect to utilize continuous rail testing under § 213.240 shall maintain records of all continuous rail testing operations sufficient for monitoring and determining compliance with all applicable regulations and shall make those records available to FRA during regular business hours following reasonable notice.

(h) Track inspection records shall be kept available to persons who performed the inspections and to persons performing subsequent inspections of the track segment.

(i) Each track owner required to keep inspection records under this section shall make those records available for inspection and copying by FRA upon request during regular business hours following reasonable notice.

(j) For purposes of complying with the requirements of this section, a track owner may create, retain, transmit, store, and retrieve records by electronic means provided that—

(1) The system used to generate the electronic record meets all requirements and contains the information required under this subpart;

(2) The track owner monitors its electronic records database to ensure record accuracy;

(3) The electronic system is designed to uniquely identify the author of the record. No two persons shall have the same electronic identity;

(4) The electronic system ensures that each record cannot be modified in any way, or replaced, once the record is completed;

(5) The electronic storage of each record shall be initiated by the person making the inspection within 72 hours following the completion of that inspection; and

(6) Any amendment to a record shall be electronically stored apart from the record which it amends. Each amendment to a record shall be uniquely identified as to the person making the amendment.

Subpart G—Train Operations at Track Classes 6 and Higher

■ 13. Amend § 213.305 by revising paragraph (a)(3), paragraph (b)(3), (c)(4), and (e), and adding paragraph (f) to read as follows:

§ 213.305 Designation of qualified individuals; general qualifications.

* * * * *

(a) * * *

(3) Be authorized by the track owner to prescribe remedial actions to correct or safely compensate for deviations from the requirements of this subpart and successful completion of a recorded examination on this subpart as part of the qualification process.

(b) * * *

(3) Be authorized by the track owner to prescribe remedial actions to correct or safely compensate for deviations from the requirements in this subpart and successful completion of a recorded examination on this subpart as part of the qualification process.

(c) * * *

(4) Authorization from the track owner to prescribe remedial actions to correct or safely compensate for deviations from the requirements in those procedures and successful completion of a recorded examination on those procedures as part of the qualification process. The recorded examination may be written, or it may be a computer file with the results of an interactive training course.

* * * * *

(e) With respect to designations under paragraphs (a), (b), (c) and (d) of this section, each track owner shall maintain records of:

(1) Each designation in effect;

(2) The date each designation was made; and

(3) The basis for each designation, including but not limited to:

(i) The exact nature of any training courses attended and the dates thereof; and

(ii) The manner in which the track owner has determined a successful completion of that training course, including test scores or other qualifying results.

(f) Each track owner shall keep these designation records readily available for inspection or copying by the Federal Railroad Administration during regular business hours, following reasonable notice.

■ 14. Amend § 213.365 by revising the section heading and paragraphs (b) through (d) to read as follow:

§ 213.365 Visual track inspections.

* * * * *

(b) Each inspection shall be made on foot or by traversing the track in a vehicle at a speed that allows the person making the inspection to visually inspect the track structure for compliance with this part. However, mechanical, electrical, and other track inspection devices may be used to supplement visual inspection. If a vehicle is used for visual inspection, the speed of the vehicle may not be more than 5 m.p.h. when traversing track crossings and turnouts; otherwise, the inspection vehicle speed shall be at the sole discretion of the inspector, based on track conditions and inspection requirements. When traversing the track in a vehicle, the inspection will be subject to the following conditions—

(1) One inspector in a vehicle may inspect up to two tracks at one time provided that the inspector's visibility remains unobstructed by any cause and that the second track is not centered more than 30 feet from the track upon which the inspector traverses;

(2) Two inspectors in one vehicle may inspect up to four tracks at a time provided that the inspectors' visibility remains unobstructed by any cause and that each track being inspected is centered within 39 feet from the track upon which the inspectors traverse;

(3) Each main track must be traversed by a vehicle or inspected on foot at least once every two weeks, and each siding must be traversed by a vehicle or inspected on foot at least once every month; and

(4) Track inspection records shall indicate which track(s) are traversed by the vehicle or inspected on foot as outlined in paragraph (b)(3) of this section.

(c) Each visual track inspection shall be made in accordance with the following schedule—

Class of track	Required frequency
6, 7, and 8	Twice weekly [1] with at least 2 calendar days' interval between inspections.
9	Three times per week.

[1] An inspection week is defined as a seven (7) day period beginning on Sunday and ending on Saturday.

(d) If the § 213.305 qualified person making the inspection finds a deviation from the requirements of this part, the person shall immediately initiate remedial action. Any subsequent movements to facilitate repairs on track that is out of service must be authorized by a § 213.305 qualified person.

* * * * *

■ 15. Amend § 213.369 by revising paragraphs (b) and (d) through (f), and adding paragraphs (g) through (i) to read as follows:

§ 213.369 Inspection records.

* * * * *

(b) Except as provided in paragraph (e) of this section, each record of an inspection under § 213.365 shall be prepared on the day the inspection is made and signed or otherwise certified by the person making the inspection. Records shall specify the author of record, the type of track inspected, date of inspection, location of inspection, nature of any deviation from the requirements of this part, and the remedial action taken by the person making the inspection. The track owner shall designate the location(s) where each original record shall be maintained for at least one year after the inspection covered by the record. The track owner shall also designate one location, within 100 miles of each state in which it conducts operations, where copies of records that apply to those operations are maintained or can be viewed following 10 days' notice by the Federal Railroad Administration.

* * * * *

(d) Records of continuous rail testing under § 213.240 shall—

(1) Include all information required under § 213.240(e);

(2) State whether the test is being conducted to satisfy the requirements for an internal rail inspection under § 213.339;

(3) List the date(s) and time(s) of the continuous rail test data collection, including the date and time of the start and end of the test run, and the date and time each suspect location was identified and field-verified;

(4) Include the determination made after field verification of each suspect location, including the:

(i) Location and type of defect found;

(ii) Size of defect; and

(iii) Initial remedial action taken, if required, and the date thereof; and

(5) Be retained for at least two years after the inspection and for at least one year after initial remedial action is taken, whichever is later.

(e) Track owners that elect to utilize continuous rail testing under § 213.240 shall maintain records of all continuous rail testing operations sufficient for monitoring and determining compliance with all applicable regulations and shall make those records available to FRA during regular business hours following reasonable notice.

(f) Track inspection records shall be kept available to persons who perform the inspections and to persons performing subsequent inspections.

(g) Each track owner required to keep inspection records under this section shall make those records available for inspection and copying by the Federal Railroad Administration upon request during regular business hours following reasonable notice.

(h) For purposes of compliance with the requirements of this section, a track owner may create, retain, transmit, store, and retrieve records by electronic means provided that—

(1) The system used to generate the electronic record meets all requirements and contains the information required under this subpart;

(2) The track owner monitors its electronic records database to ensure record accuracy;

(3) The electronic system be designed to uniquely identify the author of the record. No two persons shall have the same electronic identity;

(4) The electronic system ensures that each record cannot be modified in any way, or replaced, once the record is completed;

(5) The electronic storage of each record shall be initiated by the person making the inspection within 72 hours following the completion of that inspection; and

(6) Any amendment to a record shall be electronically stored apart from the record which it amends. Each amendment to a record shall be uniquely identified as to the person making the amendment.

(i) Each vehicle/track interaction safety record required under § 213.333(g) and (m) shall be made available for inspection and copying by the FRA at the locations specified in paragraph (b) of this section.

Issued in Washington, DC.

Ronald L. Batory,

Administrator.

[FR Doc. 2019–27748 Filed 12–30–19; 8:45 am]

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Part IV

Department of Defense

Defense Acquisition Regulations System

48 CFR Parts 204, 212, 215, 219 et al.

Defense Federal Acquisition Regulation Supplement: Demonstration Project for Contractors Employing Persons With Disabilities (DFARS Case 2018–D058); Defense Federal Acquisition Regulation Supplement: Review of Defense Solicitations by Procurement Center Representatives (DFARS Case 2019–D008); Defense Federal Acquisition Regulation Supplement: Technical Amendments; Final Rules

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204, 212, 215, 219, 226, and 252

[Docket DARS–2019–0009]

RIN 0750–AK19

Defense Federal Acquisition Regulation Supplement: Demonstration Project for Contractors Employing Persons With Disabilities (DFARS Case 2018–D058)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2019 that requires the DFARS to be updated to include an instruction on the Demonstration Project for Contractors.

DATES: Effective December 31, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer D. Johnson, telephone 571–372–6100.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 84 FR 12182 on April 1, 2019, to implement section 888 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232). Section 888 requires that the DFARS be updated to include an instruction on the demonstration project authorized by section 853 of the NDAA for FY 2004 (Pub. L. 108–136, 10 U.S.C. 2302 note), as amended by division H, section 110 of the Consolidated Appropriations Act, 2004 (Pub. L. 108–199, 10 U.S.C. 2302 note). Section 853 authorizes a demonstration project for contractors employing persons with disabilities in order to provide defense contracting opportunities for both nonprofit and for-profit entities employing individuals who have severe disabilities. Twenty respondents submitted public comments in response to the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comments in the development of the final rule. A discussion of the comments, and of the changes made to the rule as a result of those comments, is provided as follows:

A. Summary of Significant Changes From the Proposed Rule

This final rule makes the following significant changes from the proposed rule:

1. Clarification of Procedures for Use of the Demonstration Project

In DFARS subpart 226.72, Demonstration Project for Contractors Employing Persons with Disabilities, section 226.7200, Scope of subpart, is revised to clarify that subpart 226.72 does not supersede the requirements for contracting officers to use the mandatory sources in FAR part 8, Required Sources of Supplies and Services, or the small business programs in FAR part 19, Small Business Programs. This means that, depending on the specifics of a particular procurement, FAR part 8 or 19 may require a contracting officer to use a program other than the Demonstration Project for Contractors Employing Persons with Disabilities.

The text in DFARS 226.7202, Policy and procedures, is revised to clarify that, in order to limit competition to entities that meet the definition of ''eligible contractor,'' a written justification and approval is required pursuant to FAR 6.302–5, Authorized or required by statute. This means that prior to issuing the solicitation, contracting officers must explain, in writing, their rationale for using the Demonstration Project, and must obtain approval at the appropriate level based on the dollar value of the procurement.

DFARS 226.7202 is also revised to require that, in order for DoD to continue to receive small disadvantaged business credit for a contract awarded under the Demonstration Project, the contractor must be an eligible contractor when options are exercised. Contracting officers are required to verify whether the contractor is still an eligible contractor (*e.g.,* by checking the representation in the System for Award Management (SAM)) prior to exercising an option on a contract awarded under the Demonstration Project. The contracting officer may exercise an option on a contract regardless of whether the contractor is still an eligible contractor, but DoD would only continue to receive small disadvantaged business credit for that contract if the contractor remains an eligible contractor under the Demonstration Project.

2. Clarification Regarding Subcontracts Under the Demonstration Project

The final rule adds Alternate II for the clause at DFARS 252.219–7003, Small Business Subcontracting Plan (DoD Contracts), for use in solicitations and contracts issued under the Demonstration Project. Alternate II includes the definition of ''eligible contractor'' and allows the prime contractor to receive credit toward its small disadvantaged business subcontracting goal for subcontracts issued to eligible contractors. This final rule does not include, in the basic or Alternate I clause at DFARS 252.219–7003, the definition of ''eligible contractor'' and the statement regarding credit toward the small disadvantaged business subcontracting goal. The effect of this changes is that only eligible contractors that have contracts awarded under the Demonstration Project will receive credit toward their small disadvantaged business subcontracting goal for subcontracts they award to other eligible contractors under Demonstration Project contracts. The prescription for use of Alternate II of DFARS 252.219–7003 is added at DFARS 219.708.

3. Clarification of Applicability to Commercial Items

To clarify that contracting officers may use the Demonstration Project to purchase commercial items, including commercially available off-the-shelf (COTS) items, this final rule adds the following provision and clause to section 212.301, Solicitation provisions and contract clauses for the acquisition of commercial items:

- Alternate II of the clause at DFARS 252.219–7003, Small Business Subcontracting Plan (DoD Contracts).
- The provision at DFARS 252.226–7002, Representation for Demonstration Project for Contractors Employing Persons with Disabilities.

B. Analysis of Public Comments

1. Support for the Rule

Comment: Most respondents expressed support for the rule and for the opportunities it may provide to entities employing individuals with disabilities.

Response: DoD acknowledges the respondents' support.

2. Scope of the Demonstration Project

a. Product Service Codes

Comment: A few respondents commented on the need for clarity about the types of procurements that would be eligible for the Demonstration Project, particularly with regard to the product service codes (PSCs) listed in the proposed rule. One respondent requested confirmation that the Demonstration Project would be used

only for procurements under those PSCs.

Response: Section 853 does not impose limitations on the products or services that may be procured under the Demonstration Project. The PSCs listed in the **Federal Register** notice for the proposed rule were used merely to estimate the potential opportunities Congress identified in the Conference Report for the NDAA for FY 2004. The list of PSCs was not intended to limit the procurements that could be conducted under the Demonstration Project.

b. Applicability of the Demonstration Project at or Below the Simplified Acquisition Threshold and to Commercial Items

Comment: One respondent commented on the applicability of the Demonstration Project to acquisitions at or below the simplified acquisition threshold (SAT) and to acquisitions of commercial items. The respondent stated that the Demonstration Project should be limited to commercial items under the SAT, and that to apply the Demonstration Project to all commercial item acquisitions would have a wider impact than Congress intended.

Response: Section 853 did not limit the procurements that could be conducted under the Demonstration Project with regard to dollar value or the commercial (or noncommercial) nature of the product or service to be procured. By applying section 853 to acquisitions at or below the SAT, DoD allows these low dollar value procurements to be conducted under the Demonstration Project. In other words, the Demonstration Project could be used to buy products or services valued at or below the SAT. Similarly, applying section 853 to acquisitions of commercial items, including COTS items, allows these items to be procured under the Demonstration Project. For the reasons stated in section IV of this preamble, DoD has determined that it is in the Government's best interest to allow acquisitions at or below the SAT and acquisitions of commercial items, including COTS items, to be conducted under the Demonstration Project.

c. Selecting Procurements for the Demonstration Project

Comment: One respondent asked how DoD would ''determine the suitability'' of a procurement for the Demonstration Project. In particular, the respondent asked if DoD would ''apply the Rule of Two like other Small Business programs.''

Response: Contracting officers may elect to use the Demonstration Project for a particular procurement, but they are not required to do so. FAR part 10 requires agencies to conduct market research, and contracting officers will use the results of market research to determine whether a particular procurement may be appropriate for the Demonstration Project. The Demonstration Project is not a small business program. Therefore, the rule of two in FAR part 19 does not apply. However, section 853 does not provide authority to award contracts on a sole-source basis (*i.e.,* without competition), so there is an expectation that procurements under the Demonstration Project will be competed unless a sole-source award is justified and approved based on another authority.

3. Demonstration Project and the AbilityOne Program

a. Credit Toward Small Disadvantaged Business Goal for AbilityOne Contracts

Comment: Two respondents recommended allowing credit toward the small disadvantaged business goal for current and future contracts awarded to AbilityOne nonprofits that also qualify as eligible contractors under the Demonstration Project. Several respondents recommended continuing the small disadvantaged business credit for Demonstration Project contracts that are later added to the AbilityOne Procurement List.

Response: There is no statutory authority for DoD to implement the respondents' recommendations. Section 853 provides credit for DoD toward its small disadvantaged business goal only for contracts awarded to eligible contractors under the Demonstration Project. This credit does not extend to contracts awarded outside the Demonstration Project. There is no statutory authority to provide small disadvantaged business credit for contracts for products or services on the Procurement List.

b. Impact of the Demonstration Project on the AbilityOne Procurement List

Comment: Several respondents expressed concern that allowing DoD to receive credit toward its small disadvantaged business goal for contracts awarded under the Demonstration Project would have an adverse impact on AbilityOne nonprofits' ability to add projects to the AbilityOne Procurement List.

Response: The authority to add products or services to the Procurement List resides with the U.S. AbilityOne Commission, which has its own process to make such additions. Addressing this process in the DFARS is outside the scope of this rule.

c. AbilityOne Purchase Exception Process

Comment: Several respondents commented on the description of procurements made under the Demonstration Project in section III of the preamble of the proposed rule and recommended clarifying that a ''valid purchase exception'' must be granted by an appropriate authority in the AbilityOne Program. Some respondents stated that products and services on the Procurement List should not be eligible for award under the Demonstration Project. One respondent recommended modifying DFARS 226.7202 to require contracting officers to ensure compliance with FAR 8.002 and subpart 8.7 prior to conducting market research and developing a solicitation under the Demonstration Project.

Response: The final rule includes a clarification at DFARS 226.7200 that nothing in DFARS subpart 226.72 supersedes the requirement to use the mandatory sources in FAR part 8, Required Sources of Supplies and Services, or the small business programs in FAR part 19, Small Business Programs.

d. Eligibility of AbilityOne Nonprofits for the Demonstration Project

Comment: Two respondents commented that they believe it was the intent of Congress to allow AbilityOne nonprofits to be eligible to participate in the Demonstration Project. One respondent noted that there appear to be limits on the participation of AbilityOne nonprofits in procurements conducted under the Demonstration Project. Two respondents argued that there should be a presumption of eligibility for AbilityOne nonprofits to participate in procurements under the Demonstration Project.

Response: Any entity that meets the definition of ''eligible contractor'' may participate in a procurement conducted under the Demonstration Project. While AbilityOne nonprofit agencies are likely to meet the Demonstration Project requirement that at least 33 percent of their workforce must be severely disabled individuals, the statutory definition of ''eligible contractor'' in section 853 goes beyond the percentage. The definition includes other requirements (*e.g.,* health insurance, minimum wage) that a specific nonprofit agency may or may not meet. Therefore, the eligibility of any entity for the Demonstration Project cannot be presumed.

e. Oversight of the Demonstration Project

Comment: A few respondents suggested that the AbilityOne Commission should provide oversight for eligible contractors under the Demonstration Project, *i.e.,* all eligible contractors ''would fall under the umbrella of the AbilityOne program.''

Response: The Demonstration Project includes both for-profit and nonprofit entities. The AbilityOne Commission oversees only nonprofit entities. Therefore, the respondents' suggestion is not included in the final rule.

4. Demonstration Project and Small Business

a. Relationship to Small Business Programs

Comment: One respondent asked whether the Demonstration Project would ''affect the mandatory small business reserve'' at 15 U.S.C. 644(j).

Response: The Demonstration Project will not affect the mandatory small business set-asides required by 15 U.S.C. 644(j). Text has been added in the final rule to clarify that nothing in DFARS subpart 226.72 supersedes the requirement to use the small business programs in FAR part 19, Small Business Programs, or the mandatory sources in FAR part 8, Required Sources of Supplies and Services.

b. Credit Toward the Small Disadvantaged Business Goal

Comment: Two respondents objected to allowing DoD to receive credit toward its small disadvantaged business goal for contracts awarded under the Demonstration Project, since such credit should only be allowed for awards to small businesses that qualify as disadvantaged under the Small Business Administration's rules. One respondent commented that it appears prime contractors who are not eligible contractors under the Demonstration Project could obtain credit toward their small disadvantaged business subcontracting goal for subcontracts awarded to eligible contractors. Another respondent recommended changing ''may'' to ''shall'' in paragraph (c) of the proposed text at DFARS 226.7202 to more closely align with section 853.

Response: Section 853 of the NDAA for FY 2004 was amended by division H, section 110 of the Consolidated Appropriations Act, 2004 (Pub. L. 108–199), which required that contracts awarded under the Demonstration Project to eligible contractors be counted toward DoD's small disadvantaged business goal, and that subcontracts awarded to eligible contractors under these contracts be counted toward the prime contractor's small disadvantaged business goal. Therefore, this final rule requires these contracts and subcontracts to be counted toward the small disadvantaged business goal.

DoD contractors can only receive credit toward the small disadvantaged business goal for subcontracts to eligible contractors if the prime contract was awarded under the Demonstration Project. The final rule provides clarification by adding Alternate II for the clause at DFARS 252.219–7003, Small Business Subcontracting Plan (DoD Contracts), specifically for use in procurements conducted under the Demonstration Project. Alternate II will appear in contracts awarded under the Demonstration Project, not in any other contracts, so it should be clear that this credit is available only if the prime contract was awarded under the Demonstration Project.

DoD agrees that ''may'' should be changed to ''shall'' at DFARS 226.7202, paragraph (c), as well as in Alternate II of the clause at DFARS 252.219–7003, to be consistent with the statute. This change is included in the final rule.

c. Update of Systems

Comment: One respondent stated that the Federal Procurement Data System (FPDS) and the Electronic Subcontracting Reporting System (eSRS) must be updated to ensure contract awards under the Demonstration Project can be accurately reported and counted toward the small disadvantaged business goal.

Response: DoD agrees that FPDS will need to be updated to ensure accurate reporting and counting of awards to eligible contractors under the Demonstration Project. No change is needed to eSRS. Contractors with subcontracting plans will continue to report their achievements toward their subcontracting goals in eSRS.

d. Subcontracting Plan Requirement

Comment: One respondent commented that the subcontracting plan requirement may dissuade nontraditional companies from participating in the Demonstration Project. Another respondent requested clarification that small business subcontracting plans are not required from small businesses or AbilityOne nonprofit agencies.

Response: If a contract awarded under the Demonstration Project meets the requirements for a subcontracting plan at FAR 19.702, then a subcontracting plan is required. Section 853 does not provide relief from this requirement. FAR 19.702 states that subcontracting plans are not required from small businesses. It is not necessary to repeat this in the DFARS, since DoD contracting officers use the DFARS in conjunction with the FAR. Clarification regarding applicability of the subcontracting plan requirement to AbilityOne nonprofit agencies is outside the scope of this DFARS rule.

e. Limitation on Subcontracting

Comment: Two respondents requested that DoD limit outsourcing by an eligible contractor to 50 percent of the contract amount, similar to the limitation on subcontracting that applies to small business.

Response: The statutory authority for the Demonstration Project does not provide limits on subcontracting for eligible contractors. To the extent an eligible contractor decides to subcontract part of the work under a Demonstration Project contract, there is an incentive for them to subcontract to other eligible contractors because they receive credit toward their small disadvantaged business subcontracting goal for those subcontracts.

5. Eligibility Criteria

a. Verification of Compliance

Comment: Many respondents expressed concern regarding DoD's ability to verify compliance with the eligibility criteria for the Demonstration Project. Three respondents recommended independent verification of an entity's employment of severely disabled individuals. Other respondents commented that self-certification may lead to waste, fraud, and abuse, resulting in ''crowding the intended beneficiaries out of employment opportunities generated.'' These respondents suggested that AbilityOne nonprofits ''could be deemed to be compliant'' under the Demonstration Project, but other entities should be required to demonstrate compliance with the definition of eligible contractor. Another respondent urged DoD to consider strengthening the self-certification process for eligible contractors.

Response: All offerors for procurements conducted under the Demonstration Project are required to represent whether they are or are not eligible contractors. This representation has value because there are criminal and civil penalties for misrepresentations associated with Government contracts (see 18 U.S.C. 287 and 31 U.S.C. 3729–3733).

DoD considered more extensive verification requirements for this final

rule. However, such requirements would be burdensome for contractors and for the Government. At this time, DoD does not have sufficient data on the use of the Demonstration Project to determine whether this burden would be necessary. Therefore, DoD will rely on the representation requirement described above until enough data can be collected on the Demonstration Project to determine if more extensive requirements are needed.

b. Challenges to Representations

Comment: One respondent recommended that DoD identify an appellate body to which awards under the Demonstration Project could be appealed. Another respondent commented that there is no way to determine how DoD will evaluate offerors for compliance and enforcement and asked if offerors would submit a protest for evaluation of another offeror's representation. If so, the respondent asked how DoD would examine and enforce the protests.

Response: DoD contracting officers will rely on an offeror's representation under the provision at DFARS 252.226–7002. Interested parties may file a protest under existing FAR part 33 procedures. Any challenge to an entity's representation will be addressed on a case-by-case basis.

c. Definition of Eligible Contractor

Comment: Several respondents commented that eligible contractors should be required to meet the requirement to employ severely disabled individuals at a rate of 33 percent of the contractor's workforce throughout the life of the contract. One respondent questioned whether the 33 percent requirement applied to the entity's total workforce or only to employees for a specific contract, as well as whether it applied to full-time and part-time employees. Another respondent supported applying the 33 percent requirement to the entity's total workforce. One respondent recommended requiring performance of the contract by disabled individuals. Another respondent recommended, to the extent feasible, clarifying how a contractor can ascertain in good faith its compliance with the requirement to offer health insurance and retirement plan that are comparable to those offered by entities of similar size in its industrial sector or geographic region.

Response: The 33 percent requirement applies to the entity's total workforce. To qualify for a contract under the Demonstration Project, eligible contractors are required to employ severely disabled individuals at a rate of 33 percent of their total workforce over the 12-month period prior to issuance of the solicitation. The final rule has been revised to require contracting officers to verify whether the contractor is still an eligible contractor (*e.g.,* by checking the representation in SAM) prior to exercising an option under a contract awarded under the Demonstration Project. The contracting officer may decide to exercise an option on the contract if the contractor has represented that it is not an eligible contractor, but DoD will not continue to receive small disadvantaged business credit for that contract.

Regarding health insurance and retirement plans, the final rule implements the definition of ''eligible contractor'' consistent with the authorizing statute, which allows for variability among industries and regions. Entities should be generally aware of benefits packages offered by competitors in their own industry and geographic region.

d. Flexible Implementation of Eligibility Criteria

Comment: Two respondents requested greater clarity and additional guidance on possible teaming or subcontracting opportunities to meet the eligibility criteria. One of the two respondents noted that initial flexibility would be helpful regarding the requirement to employ severely disabled individuals at a rate of 33 percent of the entity's workforce, *e.g.,* a transition phase of 2 or 3 years building up to 33 percent or allow a prime contractor and subcontractor working together to meet the requirement. The other respondent commented that more contractors may participate if there is flexibility in achieving eligibility criteria.

Response: The statutory authority for the Demonstration Project specifies that an eligible contractor must employ severely disabled individuals at a rate of 33 percent of the entity's total workforce. A prime contractor and subcontractor would not qualify as a single entity in order to meet the requirement. The use of joint ventures to meet the 33 percent requirement would be consistent with this final rule.

e. Definition Related to Disabilities

Comment: Several respondents stated that it was unclear whether ''severe'' in the definition of ''severely disabled individual'' is meant to create a subset of people with disabilities who can be counted by eligible contractors, or if anyone with a disability can be counted, and recommended adopting the legal definition of blindness in 41 U.S.C. 8501(1). Another respondent commented that the definition of ''severely disabled individual'' does not clarify what would constitute a ''serious limitation of one or more functional capacities'' or a ''severe physical or mental impairment.'' Another respondent recommended that DoD consider expanding the definition of ''severely disabled individual'' to include severely disabled veterans ''to remove any uncertainty.''

Response: The definition of ''severely disabled individual'' comes from section 853. Any employee who meets the definition of ''severely disabled individual'' in this rule, including veterans, can be counted toward the requirement to employ severely disabled individuals at a rate of 33 percent of the entity's total workforce.

6. Protected Health Information

Comment: One respondent recommended the creation of criteria for eligible contractors to obtain and maintain protected health information in their possession.

Response: The creation of such criteria is outside the scope of this DFARS rule.

7. Use of Evaluation Factor

Comment: One respondent stated that it is unclear how the evaluation factor for the percentage of the entity's workforce that consists of severely disabled individuals will be applied if the contracting officer is also considering price and technical factors. The respondent recommended use of a ''best-value scenario'' and expressed support for the use of a rating method in which a higher percentage of the workforce results in a higher overall rating. Another respondent commented that the evaluation factor should not give an advantage to offerors who employ severely disabled individuals at a rate of more than 33 percent of their workforce.

Response: The contracting officer has the discretion to structure this evaluation factor in a way that best suits the specific procurement. The evaluation factor will be applied as described in the solicitation for the specific procurement.

8. Guidance and Training for Contracting Officers

Comment: One respondent noted that there is no incentive for contracting officers to use the Demonstration Project, so it is important to educate them about the Demonstration Project and to encourage them to use it.

Response: DoD acknowledges the comment and notes that training is considered for DFARS rules as needed.

9. Vocational Support Services

Comment: One respondent recommended considering the establishment of a requirement for all eligible contractors to provide vocational support services for severely disabled individuals to help them overcome challenges that impede their ability to obtain and retain employment, *e.g.,* vocational rehabilitation, employment retention support.

Response: Establishment of such a requirement is outside the scope of this rule.

10. Preemployment Training

Comment: One respondent recommended including, as part of the Demonstration Project, preemployment training for severely disabled individuals employed by eligible contractors.

Response: Inclusion of such training is outside the scope of this rule.

C. Other Changes

The final rule includes minor editorial changes in paragraph (3) of the definition of ''eligible contractor'' at 226.7201.

III. Expected Impact of the Rule

The Demonstration Project allows DoD to provide additional contracting opportunities to entities that employ individuals who are severely disabled. Procurements under the Demonstration Project must be for products and services that are not on the AbilityOne Procurement List, or for which the designated central nonprofit agency has granted a purchase exception.

The Demonstration Project is modeled after the Small Business Administration's set-aside program, but uniquely includes an incentive for Federal contractors to hire people with disabilities who currently receive Social Security benefits. Such a demonstration project provides opportunities for severely disabled individuals to become gainfully employed taxpayers. Employing people with disabilities can be a way to offset the effects of an aging and shrinking workforce. In addition, people with disabilities bring different perspectives on solving problems and adapting to different circumstances. The Demonstration Project provides another incentive for both for-profit and nonprofit entities to recruit, employ, and retain people with disabilities.

DoD estimates that there may be approximately 549 procurements conducted under the Demonstration Project per year, based on data obtained from the Federal Procurement Data System. Specifically, DoD examined the number of contracts awarded to nonprofits in product service codes (PSCs) that may be suitable for award under the Demonstration Project. The selection of PSCs was informed by the Conference Report for the NDAA for FY 2004, which authorized the Demonstration Project. The Conference Report indicated that Congress expected opportunities to exist for the Demonstration Project in aerospace end items and components, as well as information technology products and services. It is important to note that use of these PSCs to estimate the number of procurements that may be conducted under the Demonstration Project does not limit such procurements to these PSCs. Opportunities may exist for the Demonstration Project in other PSCs.

DoD obtained data for contracts awarded in the following PSCs:

PSC	Description
1560	Airframe Structural Components.
All PSCs in Group 16.	Aerospace Craft Components and Accessories.
All PSCs in Group 70.	Information Technology Equipment (including firmware), Software, Supplies, and Support Equipment.
All PSCs in Category D3.	Information Technology and Telecommunications.

In certain PSCs, there is some overlap with the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled. The areas of overlap generally included a few items within a specific PSC, not the entire PSC. Therefore, relevant PSCs were included regardless of possible overlap with the Procurement List.

DoD also used awards to nonprofits as an indicator of suitability for the Demonstration Project because of its similarities to the AbilityOne Program, in terms of employment of individuals with severe disabilities. From FY 2016 through 2018, an average of 0.16 percent of those contracts (approximately 90 each year) were awarded to nonprofits. Since the Demonstration Project applies to both for-profit and nonprofit entities, DoD conservatively estimated that up to 1 percent of contracts (approximately 549 each year) awarded in those PSCs may be suitable for the Demonstration Project.

This rule requires offerors for procurements conducted under the Demonstration Project to represent whether they are or are not eligible contractors as defined in the rule. Offerors will complete the representation in SAM. The cost associated with the representation is expected to be de minimis and is within the estimate of public burden for OMB Control Number 9000–0159, System for Award Management Registration.

IV. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule applies the requirements of section 853 of the NDAA for FY 2004 (Pub. L. 108–136), as amended by division H, section 110 of the Consolidated Appropriations Act, 2004 (Pub. L. 108–199) (10 U.S.C. 2302 note), to contracts at or below the SAT and to contracts for the acquisition of commercial items, including COTS items.

A. Applicability to Contracts at or Below the Simplified Acquisition Threshold

41 U.S.C. 1905 governs the applicability of laws to contracts or subcontracts in amounts not greater than the simplified acquisition threshold. It is intended to limit the applicability of laws to such contracts or subcontracts. 41 U.S.C. 1905 provides that if a provision of law contains criminal or civil penalties, or if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or below the SAT, the law will apply to them. The Principal Director, Defense Pricing and Contracting (DPC), is the appropriate authority to make comparable determinations for regulations to be published in the DFARS, which is part of the FAR system of regulations.

B. Applicability to Contracts for the Acquisition of Commercial Items, Including COTS Items

10 U.S.C. 2375 governs the applicability of laws to DoD contracts and subcontracts for the acquisition of commercial items (including commercially available off-the-shelf items) and is intended to limit the applicability of laws to contracts for the acquisition of commercial items, including COTS items. 10 U.S.C. 2375 provides that if a provision of law contains criminal or civil penalties, or if the Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)) makes a written determination that it is not in the best interest of the Federal Government to exempt commercial item contracts, the provision of law will apply to contracts for the acquisition of commercial items. Due to delegations of authority from

USD(A&S), the Principal Director, DPC, is the appropriate authority to make this determination.

C. Determinations

The requirements of section 853 of the NDAA for FY 2004, as amended by division H, section 110 of the Consolidated Appropriations Act, 2004, were enacted to provide defense contracting opportunities for contractors employing persons with disabilities. The majority of contracts that could be awarded under the Demonstration Project are likely to be valued at or below the SAT. Similarly, the majority of the products and services offered by these contractors are commercial items, including COTS items. Therefore, DoD has determined that it is in the best interest of the Federal Government to apply the rule to contracts valued at or below the SAT and contracts for the acquisition of commercial items, including COTS items. It is expected that contracting officers would likely be unable to utilize the Demonstration Project established by Congress, if this rule is not applied to these categories of contracts.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

VI. Executive Order 13771

This rule is not subject to the requirements of E.O. 13771, because this rule will result in no more than de minimis costs.

VII. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

DoD is amending the DFARS to include an instruction on the Demonstration Project for Contractors Employing Persons with Disabilities, as required by section 888 of the National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232). The Demonstration Project allows DoD to provide defense contracting opportunities to entities that employ individuals who are severely disabled. Nothing in this final DFARS rule supersedes the requirement to use the mandatory sources in FAR part 8 or the small business programs in FAR part 19.

There were no significant issues raised by the public in response to the initial regulatory flexibility analysis.

The rule will apply to entities, including small entities, that meet the definition of ''eligible contractor'' in the rule and that are interested in competing for contracts under the Demonstration Project. Specifically, an eligible contractor is one that employs severely disabled individuals at a rate of no less than 33 percent of the contractor's workforce over a 12-month period prior to issuance of the solicitation; pays not less than the minimum wage to those individuals; and provides health insurance and a retirement plan comparable to those provided by similar entities. The entity may operate on a for-profit or nonprofit basis.

According to data in FPDS, DoD awarded contracts to approximately 4,065 small entities each year from FY 2016 to FY 2018 in product and service codes (PSCs) that may be suitable for award under the Demonstration Project, such as aerospace components and accessories and information technology equipment and services. DoD conservatively estimates that approximately 21 percent, or 870 small entities, may meet the definition of ''eligible contractor'' and be interested in competing for contracts under the Demonstration Project.

This rule requires offerors to represent whether they are or are not eligible contractors under the Demonstration Project. This representation will be available for completion in SAM and will be completed on an annual basis. This rule does not impose any additional recordkeeping or other compliance requirements for small entities.

DoD considered more extensive recordkeeping requirements related to the definition of ''eligible contractor,'' particularly with regard to the percentage of the entity's workforce that consists of severely disabled individuals. Such recordkeeping requirements would be burdensome for small entities. At this time, DoD does not have sufficient data on the use of the Demonstration Project to determine whether this burden would be necessary. Therefore, DoD will rely on the representation requirement described above until sufficient data can be collected on the Demonstration Project to determine if more extensive requirements are needed.

VIII. Paperwork Reduction Act

This rule affects the information collection requirements in the provision at FAR 52.204–7, System for Award Management, and in the clause at FAR 52.204–13, System for Award Management Maintenance, currently approved under OMB Control Number 9000–0159, entitled System for Award Management Registration, in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The impact, however, is negligible, because the cost of providing the additional representation in SAM is de minimis and is within the estimate of public burden approved for OMB Control Number 9000–0159.

List of Subjects in 48 CFR Parts 204, 212, 215, 219, 226, and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 204, 212, 215, 219, 226, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 204, 212, 215, 219, 226, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 204—ADMINISTRATIVE MATTERS

■ 2. Amend section 204.1202 by—

■ a. Redesignating paragraphs (2)(xii), (xiii), and (xiv) as paragraphs (2)(xiii), (xiv), and (xv), respectively; and

■ b. Adding new paragraph (xii).

The addition reads as follows:

204.1202 Solicitation provision.

* * * * *

(2) * * *

(xi) 252.226–7002, Representation for Demonstration Project for Contractors Employing Persons with Disabilities.

* * * * *

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 3. Amend section 212.301(f) by–

■ a. Adding paragraph (vii)(A)(*3*); and

■ b. In paragraph (x), designating the text as paragraph (A) and adding a new paragraph (B).

The additions read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(f) * * *

(vii) * * *

(A) * * *

(*3*) Use the alternate II clause as prescribed in 219.708(b)(1)(A)(*3*).

* * * * *

(x) * * *

(B) Use the provision at 252.226–7002, Representation for Demonstration Project for Contractors Employing Persons with Disabilities, as prescribed in 226.7203.

PART 215—CONTRACTING BY NEGOTIATION

■ 4. Amend section 215.304 by adding paragraph (c)(vii) to read as follows:

215.304 Evaluation factors and significant subfactors.

(c) * * *

(vii) See 226.7202 for an additional evaluation factor required in solicitations when using the Demonstration Project for Contractors Employing Persons with Disabilities.

PART 219—SMALL BUSINESS PROGRAMS

■ 5. Amend section 219.708 by–

■ a. In paragraph (b)(1)(A) introductory text, removing ''basic or alternate clause'' and adding ''basic, alternate I, or alternate II clause'' in its place; and

■ b. Adding paragraph (b)(1)(A)(*3*).

219.708 Contract clauses.

(b) * * *

(1) * * *

(A) * * *

(*3*) Use the alternate II clause at 252.219–7003 when using the Demonstration Project described at 226.72.

* * * * *

PART 226—OTHER SOCIOECONOMIC PROGRAMS

■ 6. Add subpart 226.72, consisting of 226.7200 through 226.7203, to read as follows:

Subpart 226.72—Demonstration Project for Contractors Employing Persons With Disabilities

Sec.

226.7200 Scope of subpart.
226.7201 Definitions.
226.7202 Policy and procedures.
226.7203 Solicitation provision.

Subpart 226.72—Demonstration Project for Contractors Employing Persons With Disabilities

226.7200 Scope of subpart.

This subpart implements section 853 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136, 10 U.S.C. 2302 note). Nothing in this subpart supersedes the requirement to use the mandatory sources in FAR part 8 or the small business programs in FAR part 19.

226.7201 Definitions.

As used in this subpart—

Eligible contractor means a business entity operated on a for-profit or nonprofit basis that—

(1) Employs severely disabled individuals at a rate that averages not less than 33 percent of its total workforce over the 12-month period prior to issuance of the solicitation;

(2) Pays not less than the minimum wage prescribed pursuant to 29 U.S.C. 206 to the employees who are severely disabled individuals; and

(3) Provides, for its employees, health insurance and a retirement plan comparable to those provided for employees by business entities of similar size in its industrial sector or geographic region.

Severely disabled individual means an individual with a disability (as defined in 42 U.S.C. 12102) who has a severe physical or mental impairment that seriously limits one or more functional capacities.

226.7202 Policy and procedures.

(a)(1) Contracting officers may use this Demonstration Project to award one or more contracts to an eligible contractor for the purpose of providing defense contracting opportunities for entities that employ severely disabled individuals. To determine if there are eligible contractors capable of fulfilling the agency's requirement, conduct market research as described in 210.002 and FAR 10.002. For services, see also PGI 210.070.

(2) If the contracting officer elects to use this Demonstration Project, FAR 6.302–5 requires a written justification and approval to limit competition to eligible contractors. In the justification, identify the statutory authority for the Demonstration Project (10 U.S.C. 2302 note).

(b) When using this Demonstration Project, one of the evaluation factors shall be the percentage of the offeror's total workforce that consists of severely disabled individuals employed by the offeror. Contracting officers may use a rating method in which a higher percentage of the offeror's total workforce consisting of severely disabled individuals would result in a higher rating for this evaluation factor.

(c)(1) Contracts awarded to eligible contractors under this Demonstration Project shall be counted toward DoD's small disadvantaged business goal. The contractor must be an eligible contractor when options under the contract are exercised, in order for DoD to continue to receive credit for the contract toward its small disadvantaged business goal.

(2) Contracting officers shall verify the contractor's representation (*e.g.,* by checking the System for Award Management) prior to exercising an option on a contract awarded under the Demonstration Project. Contracting officers may exercise the option if the contractor has represented that it is not an eligible contractor; however, the contract shall no longer be counted toward DoD's small disadvantaged business goal.

226.7203 Solicitation provision.

Use the provision at 252.226–7002, Representation for Demonstration Project for Contractors Employing Persons with Disabilities, in solicitations when using this Demonstration Project, including solicitations using FAR part 12 procedures for the acquisition of commercial items.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 7. Amend section 252.204–7007 by—

■ a. Removing clause date ''(JUN 2019)'' and adding ''(DEC 2019)'' in its place; and

■ b. Adding paragraph (d)(2)(vi).

The addition reads as follows:

252.204–7007 Alternate A, Annual Representations and Certifications.

* * * * *

(d) * * *

(2) * * *

____(vi) 252.226–7002, Representation for Demonstration Project for Contractors Employing Persons with Disabilities.

* * * * *

■ 8. Amend section 252.219–7003 by–

■ a. Removing clause date ''(MAY 2019)'' and adding ''(DEC 2019)'' in its place;

■ b. In paragraph (b), removing ''goal'' and adding ''goal (section 8025 of Pub. L. 108–87)'' in its place;

■ c. In paragraph (d), removing ''Contractor's cognizant contract administration activity'' and adding ''cognizant contract administration activity for the Contractor''.

■ d. In the Alternate I clause—
■ i. Removing clause date ''(MAY 2019)'' and adding ''(DEC 2019)'' in its place;
■ ii. In paragraph (b), removing ''goal'' and adding ''goal (section 8025 of Pub. L. 108–87)'' in its place;
■ iii. In paragraph (d), removing ''Contractor's cognizant contract administration activity'' and adding ''cognizant contract administration activity for the Contractor''; and
■ e. Adding Alternate II clause to read as follows:

252.219–7003 Small Business Subcontracting Plan (DoD Contracts).

* * * * *

Alternate II. As prescribed in 219.708(b)(1)(A) and (b)(1)(A)(*3*), use the following clause, which uses different paragraphs (a) and (b) than the basic clause.

Small Business Subcontracting Plan (DoD Contracts)—Alternate II (Dec 2019)

(a) *Definitions.* As used in this clause—

Eligible contractor means a business entity operated on a for-profit or nonprofit basis that—

(1) Employs severely disabled individuals at a rate that averages not less than 33 percent of its total workforce over the 12-month period prior to issuance of the solicitation;

(2) Pays not less than the minimum wage prescribed pursuant to 29 U.S.C. 206 to the employees who are severely disabled individuals; and

(3) Provides, for its employees, health insurance and a retirement plan comparable to those provided for employees by business entities of similar size in its industrial sector or geographic region.

Summary Subcontract Report (SSR) Coordinator means the individual who is registered in the Electronic Subcontracting Reporting System (eSRS) at the Department of Defense level and is responsible for acknowledging receipt or rejecting SSRs submitted under an individual subcontracting plan in eSRS for the Department of Defense.

(b)(1) Subcontracts awarded to qualified nonprofit agencies designated by the Committee for Purchase From People Who are Blind or Severely Disabled (41 U.S.C. 8502–8504), may be counted toward the Contractor's small business subcontracting goal (section 8025 of Pub. L. 108–87).

(2) Subcontracts awarded to eligible contractors under the Demonstration Project for Contractors Employing Persons with Disabilities (see Defense Federal Acquisition Regulation Supplement (DFARS) 226.72) may be counted toward the Contractor's small disadvantaged business subcontracting goal (section 853 of Pub. L. 108–136, as amended by division H, section 110 of Pub. L. 108–199).

(c) A mentor firm, under the Pilot Mentor-Protege Program established under section 831 of Public Law 101–510, may count toward its small disadvantaged business goal, subcontracts awarded to—

(1) Protege firms which are qualified organizations employing the severely disabled; and

(2) Former protege firms that meet the criteria in section 831(g)(4) of Public Law 101–510.

(d) The master plan is approved by the cognizant contract administration activity for the Contractor.

(e) In those subcontracting plans which specifically identify small businesses, the Contractor shall notify the Administrative Contracting Officer of any substitutions of firms that are not small business firms, for the small business firms specifically identified in the subcontracting plan. Notifications shall be in writing and shall occur within a reasonable period of time after award of the subcontract. Contractor-specified formats shall be acceptable.

(f)(1) For DoD, the Contractor shall submit reports in eSRS as follows:

(i) The Individual Subcontract Report (ISR) shall be submitted to the contracting officer at the procuring contracting office, even when contract administration has been delegated to the Defense Contract Management Agency.

(ii) Submit the consolidated SSR for an individual subcontracting plan to the ''Department of Defense.''

(2) For DoD, the authority to acknowledge receipt or reject reports in eSRS is as follows:

(i) The authority to acknowledge receipt or reject the ISR resides with the contracting officer who receives it, as described in paragraph (f)(1)(i) of this clause.

(ii) The authority to acknowledge receipt of or reject SSRs submitted under an individual subcontracting plan resides with the SSR Coordinator.

(g) Include the clause at DFARS 252.219–7004, Small Business Subcontracting Plan (Test Program), in subcontracts with subcontractors that participate in the Test Program described in DFARS 219.702–70, if the subcontract is expected to exceed the applicable threshold specified in Federal Acquisition Regulation 19.702(a) and to have further subcontracting opportunities.

(End of clause)

■ 9. Add section 252.226–7002 to read as follows:

252.226–7002 Representation for Demonstration Project for Contractors Employing Persons with Disabilities.

As prescribed in 226.7203, use the following provision:

Representation for Demonstration Project for Contractors Employing Persons With Disabilities (Dec 2019)

(a) *Definitions.* As used in this provision—

Eligible contractor means a business entity operated on a for-profit or nonprofit basis that—

(1) Employs severely disabled individuals at a rate that averages not less than 33 percent of its total workforce over the 12-month period prior to issuance of the solicitation;

(2) Pays not less than the minimum wage prescribed pursuant to 29 U.S.C. 206 to the employees who are severely disabled individuals; and

(3) Provides, for its employees, health insurance and a retirement plan comparable to those provided for employees by business entities of similar size in its industrial sector or geographic region.

Severely disabled individual means an individual with a disability (as defined in 42 U.S.C. 12102) who has a severe physical or mental impairment that seriously limits one or more functional capacities.

(b) *Demonstration Project.* This solicitation is issued pursuant to the Demonstration Project for Contractors Employing Persons with Disabilities. The purpose of the Demonstration Project is to provide defense contracting opportunities for entities that employ severely disabled individuals. To be eligible for award, an offeror must be an eligible contractor as defined in paragraph (a) of this provision.

(c) *Representation.* The offeror represents that it [] is [] is not an eligible contractor as defined in paragraph (a) of this provision.

(End of provision)

[FR Doc. 2019–27826 Filed 12–30–19; 8:45 am]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 219

[Docket DARS–2019–0034]

RIN 0750–AK43

Defense Federal Acquisition Regulation Supplement: Review of Defense Solicitations by Procurement Center Representatives (DFARS Case 2019–D008)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2017 that provides limits on the scope of review by the Small Business Administration's procurement center representatives for certain solicitations awarded by or for DoD.

DATES: Effective December 31, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer D. Johnson, telephone 571–372–6100.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 84 FR 39256 on

August 9, 2019, to implement section 1811 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Pub. L. 114–328) and the Small Business Administration (SBA) proposed rule published in the **Federal Register** on December 4, 2018, at 83 FR 62516. Section 1811 limits the scope of review of DoD solicitations by SBA procurement center representatives. Additionally, section 1811 excludes these procurements from DoD's small business goals.

This final DFARS rule informs contracting officers that SBA procurement center representatives will not review acquisitions conducted by or for DoD, unless the contracting activity requests a review, if the acquisition is—

- For foreign military sales (see DFARS 225.7300);
- In support of humanitarian and civic assistance;
- In support of a contingency operation;
- Awarded pursuant to a Status of Forces Agreement or other agreement with the government of a foreign country in which U.S. Armed Forces are deployed; or
- Both awarded and performed outside the United States and its outlying areas.

SBA's final rule, published in the **Federal Register** on November 29, 2019, at 84 FR 65647, states that, unless the contracting agency requests a review, procurement center representatives will not review such procurements.

There were no public comments submitted in response to the proposed rule. The final rule includes a minor change to the paragraph numbers in DFARS 219.502–1.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule does not create any new provisions or clauses or impact any existing provisions or clauses.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

V. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This rule revises the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 1811 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Pub. L. 114–328) and the SBA final rule published in the **Federal Register** on November 29, 2019, at 84 FR 65647. Specifically, the rule informs contracting officers that SBA procurement center representatives will not review acquisitions conducted by or for DoD, unless the contracting activity requests a review, if the acquisition is—

- For foreign military sales (see DFARS 225.7300);
- In support of humanitarian and civic assistance;
- In support of a contingency operation;
- Awarded pursuant to a Status of Forces Agreement or other agreement with the government of a foreign country in which U.S. Armed Forces are deployed; or
- Both awarded and performed outside the United States and its outlying areas.

In addition, section 1811 of the NDAA for FY 2017 excludes these procurements from DoD's small business goals.

This rule is necessary to implement section 1811 of the NDAA for FY 2017. The objective of this rule is to implement, in the DFARS, the limits provided in section 1811 on the scope of review by SBA procurement center representatives.

No public comments were received in response to the initial regulatory flexibility analysis.

This rule may impact small entities that are interested in performing the types of DoD contracts listed in section 1811 of the NDAA for FY 2017. According to the Federal Procurement Data System (FPDS), DoD awarded an average of 12,658 contracts and orders for performance outside the United States to approximately 1,292 unique small entities per year in FY 2016, 2017, and 2018. Approximately 4 percent of those small entities received awards for foreign military sales. About 8 percent received awards in support of a contingency operation. Approximately 81 percent received awards made pursuant to an agreement such as a Status of Forces Agreement.

FPDS does not currently collect data on the type of humanitarian operation identified in section 1811 (*i.e.,* humanitarian and civic assistance), which is very different from the ''humanitarian or peacekeeping'' operation defined in Federal Acquisition Regulation (FAR) 2.101 and used in the DFARS. FPDS does collect data on humanitarian or peacekeeping operations, as defined in FAR 2.101. FPDS shows that about 1 percent of the small entities performing contracts or orders outside the United States received awards for humanitarian or peacekeeping operations. The data collected may provide some indication of the number of small entities that could perform contracts or orders for the type of humanitarian operation identified in section 1811.

This rule does not impose any new reporting, recordkeeping, or other compliance requirements for small entities.

There are no known, significant alternatives that would meet the requirements of the applicable statute.

VI. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 219

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR part 219 is amended as follows:

PART 219—SMALL BUSINESS PROGRAMS

■ 1. The authority citation for 48 CFR part 219 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

■ 2. Add section 219.402 to subpart 219.4 to read as follows:

219.402 Small Business Administration procurement center representatives.

(c)(i) *Authority.* This section implements section 1811 of the National

Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114–328).

(ii) *Definition.* As used in this section—

Humanitarian and civic assistance means any of the following activities carried out in conjunction with authorized military operations in a foreign country:

(A) Medical, surgical, dental, and veterinary care provided in areas of a country that are rural or underserved by professionals in those fields, including education, training, and technical assistance related to the care provided.

(B) Construction of rudimentary surface transportation systems.

(C) Well drilling and construction of basic sanitation facilities.

(D) Rudimentary construction and repair of public facilities. (10 U.S.C. 401(e))

(iii) *Exclusions.* Unless the contracting activity requests a review, SBA procurement center representatives will not review acquisitions conducted by or for DoD if the acquisition is—

(A) For foreign military sales (see 225.7300);

(B) In support of humanitarian and civic assistance;

(C) In support of a contingency operation;

(D) Awarded pursuant to a Status of Forces Agreement or other agreement with the government of a foreign country in which U.S. Armed Forces are deployed; or

(E) Both awarded and performed outside the United States and its outlying areas.

■ 3. Revise section 219.502–1 to read as follows:

219.502–1 Requirements for setting aside acquisitions.

Do not set aside acquisitions—

(1) For supplies that were developed and financed, in whole or in part, by Canadian sources under the U.S.-Canadian Defense Development Sharing Program; or

(2) Excluded from procurement center representative review (see 219.402(c)(iii)).

[FR Doc. 2019–27827 Filed 12–30–19; 8:45 am]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulation System

48 CFR Parts 204, 215, and 252

[Docket DARS–2019–0001]

Defense Federal Acquisition Regulation Supplement: Technical Amendments

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making needed technical amendments to update the Defense Federal Acquisition Regulation Supplement (DFARS).

DATES: Effective December 31, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer L. Hawes, Defense Acquisition Regulations System, OUSD (A&S) DPC (DARS), Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 571–372–6115; facsimile 571–372–6094.

SUPPLEMENTARY INFORMATION: This final rule amends the DFARS as follows:

1. DFARS sections 204.7001 and 215.404–1 are amended to add a notice to contracting officers to see DFARS Procedures, Guidance, and Information (PGI) 204.7001 and PGI 215.404–1(h) for guidance regarding entering procurement acquisition lead time milestones into the Procurement Integrated Enterprise Environment module and for reviewing and justifying pass-through contracts, respectively.

2. Internet hyperlinks are updated in DFARS clauses 252.204–7012, Safeguarding Covered Defense Information and Cyber Incident Reporting; 252.211–7006, Passive Radio Frequency Identification; and 252.235–7011, Final Scientific or Technical Report.

List of Subjects in 48 CFR Parts 204, 215, and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 204, 215, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 204, 215, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 204—ADMINISTRATIVE AND INFORMATION MATTERS

■ 2. Add new subpart 204.70, consisting of section 204.7001, to read as follows:

Subpart 204.70—Procurement Acquisition Lead Time

Sec.
204.7001 Procedures.

Subpart 204.70—Procurement Acquisition Lead Time

204.7001 Procedures.

Follow the procedures at PGI 204.7001 for reporting procurement acquisition lead time milestones in the Procurement Integrated Enterprise Environment module.

PART 215—CONTRACTING BY NEGOTIATION

■ 3. Amend section 215.404–1 by adding paragraph (h) to read as follows:

215.404–1 Proposal analysis techniques.

* * * * *

(h) *Review and justification of pass-through contracts.* Follow the procedures at PGI 215.404–1(h)(2) when considering alternative approaches or making the determination that the contracting approach selected is in the best interest of the Government, as required by FAR 15.404–1(h)(2).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.204–7012 [Amended]

■ 4. Amend section 252.204–7012 by—

■ a. Removing the clause date ''(OCT 2016)'' and adding ''(DEC 2019)'' in its place; and

■ b. In paragraphs (c)(1)(ii) and (c)(2), removing ''*http://dibnet.dod.mil*'' and adding ''*https://dibnet.dod.mil*'' in both places; and

■ c. In paragraph (c)(3), removing ''*http://iase.disa.mil/pki/eca/Pages/index.aspx*'' and adding ''*https://public.cyber.mil/eca/*'' in its place.

* * * * *

252.211–7006 [Amended]

■ 5. Amend section 252.211–7006 by—

■ a. Removing the clause date ''(MAR 2016)'' and adding ''(DEC 2019)'' in its place; and

■ b. In paragraph (d), removing ''*http://www.epcglobalinc.org/standards/*'' and adding ''*http://www.gs1.org/epc-rfid*'' in its place.

* * * * *

252.235–7011 [Amended]

■ 6. Amend section 252.235–7011 by—

■ a. Removing the clause date ''(JAN 2015)'' and adding ''(DEC 2019)'' in its place; and

■ b. In paragraphs ((a), (b), and (c), removing ''*http://www.dtic.mil/dtic/submit/*'' and adding ''*https://discover.dtic.mil/submit-documents/*'' in each place; and in paragraph (c) also removing ''*TR@DTIC.SMIL.MIL*'' and adding ''*dtic.belvoir.da.mbx.tr@mail.smil.mil*'' in its place.

[FR Doc. 2019–27829 Filed 12–30–19; 8:45 am]

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Reader Aids

Federal Register

Vol. 84, No. 250

Tuesday, December 31, 2019

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General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6050**

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FEDERAL REGISTER PAGES AND DATE, DECEMBER

65907–66062 2
66063–66280 3
66281–66560 4
66561–66812 5
66813–67168 6
67169–67342 9
67343–67656 10
67657–67826 11
67827–68018 12
68019–68324 13
68325–68780 16
68781–69294 17
69295–69616 18
69617–69982 19
69983–70392 20
70393–70880 23
70881–71296 26
71297–71734 27
71735–72226 30
72227–72564 31

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
9968 66281
9969 66283
9970 66286
9971 67657
9972 68323
9973 69617
9974 72187

Executive Orders:
13866 (superseded by 13901) 72213
13898 66059
13899 68779
13900 69983
13901 72213

Administrative Orders:
Notices:
Notice of December 18, 2019 69981

5 CFR

Proposed Rules:
335 70906
532 72250
1630 68815
1632 68815
1650 68815
2424 70439

7 CFR

2 69295
273 66783
990 69295
1410 66813
1466 69272
1486 69985
1487 70393
3555 70881
4288 71297

Proposed Rules:
66 68816
205 67242
1216 65929
1260 71829

8 CFR

Proposed Rules:
103 67243
106 67243
204 67243
208 69640
211 67243
212 67243
214 67243
216 67243
223 67243
235 67243
236 67243
240 67243
244 67243
245 67243
245a 67243
248 67243
264 67243
274a 67243
301 67243
319 67243
320 67243
322 67243
324 67243
334 67243
341 67243
343a 67243
343b 67243
392 67243
1208 69640

9 CFR

Proposed Rules:
56 66631
145 66631
146 66631
147 66631

10 CFR

1 66561
2 ..... 66561, 68781
37 66561
40 66561
50 ..... 66561, 70399
51 66561
52 ..... 66561, 68781
55 66561
71 66561
72 ..... 66561, 67827, 70400
73 ..... 66561, 67659
74 66561
100 66561
140 66561
150 66561
430 71626
955 70402

Proposed Rules:
429 67106
430 ..... 67106, 68060, 70842
431 66327

12 CFR

1 69296
3 ..... 68019, 71735
5 69296
6 71735
19 71735
23 69296
24 69296
25 71738
32 69296
34 ..... 69296, 71735
46 71735
109 71735
160 71735
161 71735
163 71735
167 71735

195 ... 71738
206 ... 70887
208 ... 70887
209 ... 68325
211 ... 70887
215 ... 70887
217 ... 68019, 70887
223 ... 70887
225 ... 70887
228 ... 71738
238 ... 70887
251 ... 70887
Ch. III ... 70413
324 ... 68019
327 ... 66833
345 ... 71738
351 ... 66063
624 ... 68326
Ch. VII ... 65907
702 ... 68781
703 ... 69298
1003 ... 69993
1026 ... 70410
1310 ... 71740

Proposed Rules:

43 ... 70073
45 ... 71833
217 ... 67381
237 ... 71833
244 ... 70073
252 ... 67381
303 ... 68353
308 ... 68353
331 ... 66845
349 ... 71833
373 ... 70073
624 ... 71833
1005 ... 67132
1221 ... 71833
1234 ... 70073
1238 ... 68350

13 CFR

120 ... 66287
121 ... 66561

Proposed Rules:

124 ... 66647

14 CFR

11 ... 71714
25 ... 67828
39 ... 66063, 66579, 66582, 66838, 67169, 67171, 67174, 67176, 67179, 67830, 67832, 67834, 67837, 67851, 67854, 68034, 68037, 68326, 69995, 69997, 70000, 70415, 71304, 71770, 71772, 71776, 71778, 71782, 71785, 71788, 71792, 72227
71 ... 66066, 67858, 67860, 68039, 68041, 68330, 69619
91 ... 67659, 67665
97 ... 67862, 67864, 70419, 70423
300 ... 71714
302 ... 71714

Proposed Rules:

1 ... 72438
39 ... 65931, 65935, 66080, 66082, 67246, 67248, 67251, 68060, 68063, 68363, 68365, 68368, 68370, 68374, 68376, 68817, 68819, 68822, 68824, 69662, 70076, 70078, 71333, 71335, 72251, 72254, 72257, 72260
47 ... 72438
48 ... 72438
71 ... 67381, 67383, 67385, 67880, 67881, 67884, 67886, 68379, 68381, 68383, 68385, 68827, 69346
89 ... 72438
91 ... 72438
107 ... 72438

15 CFR

744 ... 66840, 69298
902 ... 67183

Proposed Rules:

7 ... 70445

17 CFR

4 ... 67343, 67355
13 ... 68787
200 ... 68550
240 ... 68550
249 ... 68550

Proposed Rules:

1 ... 69664
23 ... 69664
37 ... 72262
50 ... 70446
140 ... 69664
202 ... 71580
229 ... 71580
230 ... 71580
232 ... 71580
239 ... 71580
240 ... 71580
246 ... 70073
270 ... 71580
274 ... 71580
275 ... 67518
279 ... 67518
240 ... 66458, 66518

18 CFR

Proposed Rules:

1304 ... 67386

20 CFR

404 ... 69298
416 ... 69298

Proposed Rules:

402 ... 70080
404 ... 67394, 70080
408 ... 70080
411 ... 70080
416 ... 67394, 70080
422 ... 70080
617 ... 67681
618 ... 67681

21 CFR

73 ... 69620
101 ... 72230
310 ... 68331
807 ... 68334
812 ... 68334
814 ... 68334
862 ... 71794
864 ... 71794
866 ... 71794
868 ... 71794
870 ... 71794
872 ... 71794
874 ... 71794
876 ... 71794
878 ... 71794
880 ... 71794
882 ... 70003, 71794
884 ... 71794
886 ... 71794
888 ... 71794
890 ... 71794
892 ... 71794
1301 ... 68340

Proposed Rules:

1 ... 70796
133 ... 71834
251 ... 70796
814 ... 68829

22 CFR

51 ... 67184
120 ... 70887

24 CFR

Proposed Rules:

267 ... 70073

25 CFR

224 ... 69602

26 CFR

1 ... 66968, 67370, 68042, 68790, 69022, 69305

Proposed Rules:

1 ... 65937, 67046, 68833, 69124, 70089, 70356, 71836
301 ... 69124, 70462

28 CFR

2 ... 70013

Proposed Rules:

523 ... 72274

29 CFR

102 ... 69524, 70424
548 ... 68736
778 ... 68736
1910 ... 68794
4022 ... 68043
4044 ... 67186, 68043

Proposed Rules:

10 ... 67681
90 ... 67681
103 ... 66327, 67682
401 ... 68842
516 ... 67681
531 ... 67681
578 ... 67681
579 ... 67681
580 ... 67681
1614 ... 67683

30 CFR

902 ... 66296
950 ... 66309

32 CFR

225 ... 71819
775 ... 66586

Proposed Rules:

651 ... 70328

33 CFR

52 ... 68342
100 ... 67375, 68044
117 ... 70426
165 ... 66069, 66840, 67187, 67375, 68343, 69326, 69328, 70014, 70017, 70019, 70893, 71823

Proposed Rules:

117 ... 69685, 69687, 70090
147 ... 69348
165 ... 68858, 68860

34 CFR

5 ... 67865

Proposed Rules:

Ch. III ... 67395
674 ... 67778
675 ... 67778
676 ... 67778
682 ... 67778
685 ... 67778
686 ... 67778
690 ... 67778
692 ... 67778
694 ... 67778

37 CFR

2 ... 68045, 69330
7 ... 69330

Proposed Rules:

Ch. II ... 66328
Ch. III ... 71852

38 CFR

17 ... 68046
51 ... 67868

Proposed Rules:

1 ... 68065
17 ... 70908

39 CFR

20 ... 66072

Proposed Rules:

111 ... 69688
3010 ... 67685
3017 ... 70466
3020 ... 67685
3050 ... 67402, 67685
3055 ... 67685

40 CFR

9 ... 66591, 66599
52 ... 66074, 66075, 66316, 66612, 67189, 67191, 67196, 67378, 67873, 68049, 68050, 69331, 70428, 70895, 71306, 71824
68 ... 69834
70 ... 67200
80 ... 69335
81 ... 70897
180 ... 66616, 66620, 66626, 70021, 70023, 70429
260 ... 67202
261 ... 67202
264 ... 67202
265 ... 67202
268 ... 67202
270 ... 67202
272 ... 67875
273 ... 67202
282 ... 69626
721 ... 66591, 66599

Proposed Rules:

1 ... 66084
22 ... 66084
23 ... 66084
49 ... 66084
51 ... 68069, 70092
52 ... 66084, 66096, 66098, 66103, 66334, 66345, 66347, 66352, 66361, 66363, 66366, 66853, 68097, 68863, 69349, 70092, 70109, 70130, 70913,

71854, 71862, 71866, 72278, 72289
55 ..... 65938, 66084
60 68069
61 68069
63 ..... 67889, 68069, 68870, 69182
71 66084
78 66084
124 66084
141 69695
142 69695
222 66084
257 65941
271 70135
282 69696
320 70467
372 66369
721 66855
1604 67899

41 CFR

Proposed Rules:
60-1 71875
60-2 71875
60-300 71875
60-741 71875

42 CFR

414 71827

Proposed Rules:
121 70139
430 71887
433 71887
447 71887
455 71887
457 71887
486 70628
1001 72289

44 CFR

64 ..... 65924, 68346
350 70435

45 CFR

155 71674
156 71674
1115 66319
1230 70902
2554 70902

47 CFR

1 ..... 66078, 66716, 66843
9 66716
12 66716
20 66716
22 66716
25 66716
54 ..... 67220, 70026, 71308
64 66716
73 70037
76 69342

Proposed Rules:
1 69696
27 ..... 69351, 69696
51 70484
54 ..... 69697, 71338
61 70484
64 71888
69 70484
73 ..... 70485, 70489
74 70489

48 CFR

Ch. I 68314, 68319
4 68314
52 68314
204 ..... 72231, 72554, 72563
212 ..... 72231, 72239, 72554
213 72231
215 ..... 72554, 72563
219 ..... 72554, 72561
225 ..... 72239, 72245
226 72554
244 72247
252 ..... 72231, 72239, 72245, 72554, 72563
501 69627
536 69627
552 69627
1419 69343

49 CFR

1 71714
5 71714
7 71714
10 67671
106 71714
211 71714
382 68052
383 68052
384 68052
389 71714
553 71714
601 71714
1152 66320

Proposed Rules:
24 69466
172 70491
173 70491
213 72526
Ch. III 68386
571 69698
572 70916

50 CFR

17 69918
216 70040
217 70274
218 70712
223 70048
300 ..... 68057, 70040
622 ..... 67236, 67674, 68058, 69715, 70904
648 ..... 66630, 68348, 68797, 68798
660 ..... 65925, 65926, 67674, 68799, 70904
679 ..... 65927, 67183, 70064, 70436, 70438, 71828
697 71329

Proposed Rules:
17 ..... 67060, 69707, 69712, 69713
218 67404
600 68389
622 69715
648 68871
679 ..... 66109, 66129, 67421

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List December 26, 2019

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